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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0733]

RIN 1625–AA08

Special Local Regulation; International Jet Sports Boating Association; Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement date of the special local regulation for the annual International Jet Sports Boating Association event held on the navigable waters of the Colorado River near Lake Havasu City, Arizona. The change of enforcement date for the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in the waters of the Colorado River near Lake Havasu, Arizona, from 6:30 a.m. to 6:30 p.m. from October 1, 2016, to October 9, 2016. We invite your comments on this proposed rulemaking.

DATES: This rule is effective from October 1, 2016, through October 9, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0733 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
TFR Temporary Final Rule
BNM Broadcast Notice to Mariners
LNM Local Notice to Mariners
COTP Captain of the Port

II. Regulatory Information

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as there is not enough time to complete notice and comment rulemaking before the event is scheduled to take place. For this reason, publishing an NPRM would be impracticable.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. This rule is necessary for the safety of life during the high-speed boat race on these navigable waters. For the reasons above, it would be impracticable to delay this rule to provide a full 30 days notice.

III. Background, Purpose and Legal Basis

The International Jet Sports Boating Association race is an annual recurring event listed in Table 1, Item 10 of 33 CFR 100.1102, Annual Marine Events on the Colorado River for the San Diego COTP Zone. Special local regulations exist for the marine event to allow for special use of the Colorado River waterway for ten days. 33 U.S.C. 1233, authorizes the Coast Guard to establish and define special local regulations to promote the safety of life on navigable waters during regattas or marine parades. The enforcement date and regulated location for this marine event are listed in Table 1, Item 10 of Section 100.1102. While the date listed in the Table indicates that the marine event will occur on the second Saturday to the third Sunday in October, the dates for the event this year are Saturday, October 1, 2016 through Sunday, October 9, 2016. Therefore, a temporary rule change is needed to reflect the actual date of the event.

IV. Discussion of Proposed Rule

In this temporary final rule, the regulations in 33 CFR 100.1102 will be temporarily suspended for Table 1, Item 10 of that Section and a temporary regulation will be inserted as Table 1, Item 20 of that Section in order to reflect that the special local regulation will be effective and enforced from 6:30 a.m. to 6:30 p.m. from October 1, 2016 to October 9, 2016. This change is needed to accommodate the sponsor's event plan and to ensure that adequate regulations are in place to protect the safety vessels and individuals that may be present in the regulated area. No other portion of Table 1 of Section 100.1102 or other provisions in Section 100.1102 shall be affected by this regulation.

The special local regulations are necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the Colorado River waterway. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the proposed times. Before the effective period, the Coast Guard will publish information on the event in the weekly LNM. The proposed regulatory text appears at the end of this document.

V. Regulatory Analysis

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic will be able to safely transit around this area which would impact a small designated area of the Colorado River. Moreover, the Coast Guard would publish a Local Notice to Mariners about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the Colorado River, Lake Havasu, Arizona, from 6:30 a.m. to 6:30 p.m. from October 1, 2016 to October 9, 2016.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic will be allowed to pass through the zone with permission of the COTP, or his designated representative and the special local regulation is limited in size and duration. The Coast Guard will issue maritime advisories widely available to all waterway users. Before the effective period, the Coast Guard will publish event information on the Internet in the weekly LNM marine information report. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of marine event special local regulations on the navigable waters of the Colorado River. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.1102, in Table 1 to § 100.1102, suspend item "10" and add temporary item "20" to read as follows:

§ 100.1102 Annual Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

* * * * *

TABLE 1 TO § 100.1102

* * * * * * *

20. IJSBA World Finals

Sponsor	International Jet Sporting Association (IJSBA).
Event Description	Personal Watercraft Race.
Date	October 1, 2016 through October 9, 2016.
Location	Lake Havasu City, AZ.
Regulated Area	The navigable waters of Lake Havasu, AZ in the area known as Crazy Horse Campgrounds.

Dated: September 6, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting, Captain of the Port San Diego.

[FR Doc. 2016–22611 Filed 9–19–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0877]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs three Multnomah County, Oregon bridges: the Broadway Bridge; the Burnside Bridge; and the Hawthorne Bridge; all crossing the Willamette River at Portland, OR. The deviation is necessary to accommodate the Portland Marathon foot race event. This deviation allows the bridges to remain in the closed-to-navigation position to allow for the safe movement of event participants.

DATES: This deviation is effective from 5 a.m. to 3 p.m. on October 9, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0877] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: Multnomah County, Oregon has requested a temporary deviation from the operating schedule for the Broadway Bridge, mile 11.7; Burnside Bridge, mile 12.4; and Hawthorne Bridge, mile 13.1; all crossing the Willamette River at Portland, OR. The deviation is necessary to accommodate Portland Marathon participants' safe movement over the bridges. To facilitate this event, the draws of theses bridges will be maintained as follows: The Broadway Bridge provides a vertical clearance of 90 feet in the closed-to-navigation position; the Burnside Bridge provides a vertical clearance of 64 feet in the closed-to-navigation position; and the Hawthorne Bridge provides a vertical clearance of 49 feet in the closed-to-navigation position; all clearances are referenced to the vertical clearance above Columbia River Datum 0.0. The normal operating schedule for all three bridges is in 33 CFR 117.897.

The deviation period is from 5 a.m. until 3 p.m. on October 9, 2016. Waterway usage on the Willamette River ranges from commercial tug and barge to small pleasure craft. Vessels able to pass through the Broadway Bridge, the Burnside Bridge, and the Hawthorne Bridge in the closed-to-navigation position may do so at anytime. These bridges will be able to open for emergency vessels in route to a call. The Willamette River has no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 9, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–22548 Filed 9–19–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0407; FRL–9952–55–Region 7]

Partial Approval and Partial Disapproval of Implementation Plans; State of Iowa; Infrastructure SIP Requirements for the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to partially approve and partially disapprove elements of the State Implementation Plan (SIP) submission from the State of Iowa addressing the applicable requirements of the Clean Air Act (CAA) section 110 for the 2008 ozone NAAQS. Section 110 requires that each state adopt and submit a SIP to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective on October 21, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2016–0407. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *www.regulations.gov* and at EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7039, or by email at *Hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. What is being addressed in this document?

EPA is taking final action to partially approve and partially disapprove the infrastructure SIP submission received from the State of Iowa on January 17, 2013. EPA is approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prong 3 only, (E) through (H), and (J) through (M).

EPA is disapproving element 110(a)(2)(D)(i)(II)—prong 4. EPA did not act on sections 110(a)(2)(D)(i)(I)—prongs 1 and 2, and 110(a)(2)(I).

A Technical Support Document (TSD) is included as part of the docket to discuss the details of this rulemaking.

The proposal to approve the infrastructure SIP submission was published on Friday July 29, 2016, in the **Federal Register**. 81 FR 49911. The comment period ended August 29, 2016. There were no comments on the proposal.

II. What action is EPA taking?

The EPA is taking final action to partially approve and partially disapprove the January 17, 2013 submission from the State of Iowa which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 ozone NAAQS. Based on review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Iowa's SIP, EPA believes that Iowa's SIP meets the elements of sections 110(a)(1) and (2) with respect to the 2008 ozone NAAQS. EPA is taking final action to partially approve and partially disapprove the infrastructure SIP submission received from the State of Iowa on January 17, 2013. EPA is approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prong 3 only, (E) through (H), and (J) through (M). EPA is disapproving element 110(a)(2)(D)(i)(II)—prong 4. The EPA is not required to take further action with respect to prong 4 because the CSAPR Federal Implementation Plan already in place achieves the necessary emission reductions. EPA did not act on sections 110(a)(2)(D)(i)(I)—prongs 1 and 2, and 110(a)(2)(I).

The EPA's analysis of these submissions is addressed in a TSD as part of the docket.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Prevention of significant deterioration, Reporting and recordkeeping requirements.

Dated: September 8, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. In section 52.820(e), the table is amended by adding entry (43) in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
*	*	*	*	* * *
(43) Sections 110(a)(1) and (2) Infrastructure Requirements 2008 Ozone NAAQS.	Statewide	1/17/13	9/20/16 and [Insert **Federal Register** citation].	This action approves the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II)—prong 3 only, (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(D)(i)(II)—prong 4 is disapproved. 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2016–0407; FRL–9952–55–Region 7].
*	*	*	*	* * *

[FR Doc. 2016–22503 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0501; FRL–9952–44–Region 7]

Approval of Iowa's Air Quality Implementation Plans; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: The Environmental Protection Agency (EPA) inadvertently approved and codified incorrect entries for final rule actions published in the **Federal Register**. This technical amendment corrects the entries.

DATES: This rule is effective on September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Jan Simpson at (913) 551–7089, or by email at *simpson.jan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA inadvertently approved and codified incorrect entries in paragraph (c) to 40 CFR 52.820 for three separate final rule actions published in the **Federal Register**. The first published on June 11, 2015, the second published on August 14, 2015, and the third published on June 17, 2016.

The June 11, 2015 (80 FR 33192), **Federal Register** direct final action approving revisions to chapter 22 rule 567–22.3 "*Issuing Permits*" omitted the following sentence in the explanation column on page 33194 "Subrule 22.3(6) has not been approved as part of the SIP. Subrule 22.3(6), Limits on Hazardous Air Pollutants, has been approved under Title V and section 112(l). The remainder of the rule has not been approved pursuant to Title V and section 112(l)". Therefore we are correcting page 33194 of the June 11, 2015, **Federal Register** direct final rule to add the missing language to the explanation column in table section 52.820 (c). The August 14, 2015 (80 FR 48718), **Federal Register** final rule codification of this same rule, chapter 22 rule 567–22.3 "*Issuing Permits*", state effective date and the citation information in the EPA approval date column is incorrect. Therefore, we are correcting page 48720 of the August 14, 2015, **Federal Register** final rule to reflect the most current Federally-approved information by changing the state effective date and the EPA approval date column information.

The June 17, 2016 (81 FR 39585), **Federal Register** direct final action approving revisions to chapter 20 rule 567.20.2 "*Definitions*" state effective date of May 7, 2008, on page 39587 is correct, however the state effective date April 22, 2015, published on June 11, 2015 (80 FR 33192) is the most current chronological effective date of this rule. By using the most current chronological effective date, we provide the reader a clear understanding of the Federally-approved state effective date of this rule. Therefore, we are correcting page 39587 of the June 17, 2016, **Federal Register** direct final action to reflect the information of the most chronological effective and EPA approval dates.

Dated: September 6, 2016.

Mark Hague,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. Amend § 52.820(c) by revising the entries for 567–20.2 and 567–22.3 to read as follows:

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA Approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission (567)				
Chapter 20—Scope of Title—Definitions—Forms—Rule of Practice				
*	* *		* *	* *
567–20.2	Definitions	4/22/15	6/17/16; 81 FR 39585	The definitions for "anaerobic lagoon," "odor," "odorous substance," "odorous substance source" are not SIP approved.
*	* *		* *	* *
Chapter 22—Controlling Pollution				
567–22.3	Issuing Permits	4/22/15	6/11/15; 80 FR 33192	Subrule 22.3(6) has not been approved as part of the SIP. Subrule 22.3(6), Limits on Hazardous Air Pollutants, has been approved under Title V and section 112(l). The remainder of the rule has not been approved pursuant to Title V and section 112(l).
*	* *		* *	* *

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[FR Doc. 2016–22398 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0807; FRL–9951–19–Region 9]

Approval of California Air Plan Revisions, Department of Pesticide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the California Department of Pesticide Regulations (CDPR) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from pesticides. The overall purpose of the new and revised regulations is to restrict the use of certain nonfumigant pesticide products applied to certain crops in the San Joaquin Valley ozone nonattainment area when VOC emissions meet or exceed 95% of the 18.1 tons per day limit on VOC emissions, or 17.2 tons per day. The rules establish limits on the sale and use of high-VOC formulations of nonfumigant pesticide products that contain any of four specified primary active ingredients for use on seven specified crops grown in the San Joaquin Valley. We are approving these rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on October 20, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2015–0807. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Proposed Action

On February 8, 2016 (81 FR 6481), the EPA proposed to approve the following rules into the California SIP.

Local agency	Rule #	Rule title	Adopted/ amended/ revised	Submitted
CDPR	3 CCR 6452	Reduced VOC Emissions Field Fumigation Methods	05/23/13	02/04/15
CDPR	3 CCR 6452.2	VOC Emission Limits	05/23/13	02/04/15
CDPR	3 CCR 6558	Recommendations for Use of Nonfumigants in the San Joaquin Valley (SJV) Ozone Nonattainment Area (NAA).	05/23/13	02/04/15
CDPR	3 CCR 6577	Sales of Nonfumigants for Use in the SJV Ozone NAA	05/23/13	02/04/15
CDPR	3 CCR 6864	Criteria for Identifying Pesticides as Toxic Air Contaminants.	05/23/13	02/04/15

Local agency	Rule #	Rule title	Adopted/ amended/ revised	Submitted
CDPR	3 CCR 6880	Criteria to Designate Low-VOC or High-VOC Nonfumigant Pesticide Products.	05/23/13	02/04/15
CDPR	3 CCR 6881	Annual VOC Emissions Inventory Report	05/23/13	02/04/15
CDPR	3 CCR 6883	Recommendation Requirements in the SJV Ozone NAA.	05/23/13	02/04/15
CDPR	3 CCR 6884	SJV Ozone NAA Use Prohibitions	05/23/13	02/04/15
CDPR	3 CCR 6886	Dealer Responsibilities for the SJV Ozone NAA	05/23/13	02/04/15

The overall purpose of the new and revised regulations is to restrict the use of certain nonfumigant pesticide products applied to certain crops in the San Joaquin Valley ozone nonattainment area when VOC emissions meet or exceed 95% of the 18.1 tons per day limit on VOC emissions, or 17.2 tons per day. CDPR added or revised the rules specified above largely to establish limits on the sale and use of high-VOC formulations of nonfumigant pesticide products that contain abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as their primary active ingredient, for use on any of the following seven crops: Alfalfa, almond, citrus, cotton, grape, pistachio, and walnut. We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment.[1] The commenter supported EPA approval of these rules because they are in line with California's efforts to reduce smog and improve the health of the environment, which improves the quality of life of its residents.

III. EPA Action

No adverse comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the California rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the

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[1] See *http://www.regulations.gov;* Docket ID "EPA–R09–OAR–2015–0807–0076."

[2] 62 FR 27968 (May 22, 1997).

Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 9, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220a in paragraph (c), table 1, is amended by:

■ a. Revising the entries for "6452" and "6452.2";

■ b. Removing the entry for "6452.4";

■ c. Adding a table entry titled "Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 5 (Agricultural Pest Control Adviser Licenses)" after the entry for "6452.3"; and under it, adding an entry for "6558";

■ d. Adding a table entry titled "Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 6 (Pest Control Dealer Licenses)" after the new entry "6558"; and under it, adding an entry for "6577";

■ e. Adding a table entry titled "Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 1 (Toxic Air Contaminants)" after the entry "6626"; and under it, adding an entry for "6864"; and

■ f. Adding a table entry titled "Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 2 (Volatile Organic Compounds)" after the new entry "6864"; and under it, adding entries for "6880", "6881", "6883", "6884", and "6886".

The additions and revisions read as follows:

§ 52.220a Identification of plan—partial.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]

State citation	Title/Subject	State effective date	EPA Approval date	Additional explanation
*	*	*	*	*
Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 2 (Pesticides), Subchapter 4 (Restricted Materials), Article 4 (Field Fumigant Use Requirements)				
*	*	*	*	*
6452	Reduced Volatile Organic Compound Emissions Field Fumigation Methods.	November 1, 2013	81 FR 6481, February 8, 2016.	Amends previous version of rule approved at 77 FR 65294 (October 26, 2012). Amended rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
*	*	*	*	*
6452.2	Volatile Organic Compound Emission Limits.	November 1, 2013	81 FR 6481, February 8, 2016.	Amends previous version of rule approved at 77 FR 65294 (October 26, 2012). Amended rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
*	*	*	*	*

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/Subject	State effective date	EPA Approval date	Additional explanation
Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 5 (Agricultural Pest Control Adviser Licenses)				
6558	Recommendations for Use of Nonfumigants in the San Joaquin Valley Ozone Nonattainment Area.	November 1, 2013	81 FR 6481, February 8, 2016.	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 6 (Pest Control Dealer Licenses)				
6577	Sales of Nonfumigants for Use in the San Joaquin Valley Ozone Nonattainment Area.	November 1, 2013	81 FR 6481, February 8, 2016.	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
*	*	*	*	*
Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 1 (Toxic Air Contaminants)				
6864	Criteria for Identifying Pesticides as Toxic Air Contaminants.	November 1, 2013	81 FR 6481, February 8, 2016.	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 2 (Volatile Organic Compounds)				
6880	Criteria to Designate Low-Volatile Organic Compound (VOC) or High-VOC Nonfumigant Pesticide Products.	November 1, 2013	September 20, 2016, [insert **Federal Register** citation].	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6881	Annual Volatile Organic Compound Emissions Inventory Report.	November 1, 2013	September 20, 2016, [insert **Federal Register** citation].	Amends and renumbers previous version of rule approved at 77 FR 65294 (October 26, 2012) as 3 CCR § 6452.4. Amended and renumbered rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6883	Recommendation Requirements in the San Joaquin Valley Ozone Nonattainment Area.	November 1, 2013	September 20, 2016, [insert **Federal Register** citation].	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6884	San Joaquin Valley Ozone Nonattainment Area Use Prohibitions.	November 1, 2013	September 20, 2016, [insert **Federal Register** citation].	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6886	Dealer Responsibilities for the San Joaquin Valley Ozone Nonattainment Area.	November 1, 2013	September 20, 2016, [insert **Federal Register** citation].	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
*	*	*	*	*

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[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

* * * * *

[FR Doc. 2016–22499 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0011; FRL–9952–50–Region 4]

Air Plan Approval; Tennessee; Revision and Removal of Stage I and II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC), for parallel processing on February 8, 2016, and in final form on July 15, 2016. This SIP revision seeks to lower applicability thresholds for certain sources subject to Federal Stage I requirements, remove the Stage II vapor control requirements, and add requirements for decommissioning gasoline dispensing facilities, as well as requirements for new and upgraded gasoline dispensing facilities in the Nashville, Tennessee Area. EPA has determined that Tennessee's July 15, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective October 20, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0011. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's phone number is (404) 562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2016, Tennessee submitted a SIP revision to EPA seeking modifications of the Stage II and Stage I requirements in the State. First, in relation to Stage II, TDEC seeks the removal of the Stage II vapor recovery requirements from TAPCR 1200–3–18–.24 through the addition of requirements for decommissioning, and the phase out of the Stage II vapor recovery systems over a 3-year period from January 1, 2016, to January 1, 2019, in Davidson, Rutherford, Sumner, Williamson and Wilson Counties. Second, TDEC seeks to amend the Stage I requirements for gasoline dispensing facilities by adopting by reference the federal requirements of 40 CFR part 63, subpart CCCCCC and removing most of the State-specific language for Stage I vapor recovery. EPA published a proposed rulemaking through parallel processing on June 1, 2016 (81 FR 34940), to approve TDEC's February 8, 2016, draft SIP revision. The details of Tennessee's submittal and the rationale for EPA's action are explained in the proposed rule. The comment period for this proposed rulemaking closed on July 1, 2016. EPA did not receive any comments, adverse or otherwise, related to this rulemaking during the public comment period.[1] EPA noted in its June 1, 2016, proposed rulemaking that the Agency would take final action based on that proposed rulemaking only if no substantive changes were made to Tennessee's submission when it was provided to EPA in final form. On July 15, 2016, Tennessee provided its final SIP revision for the aforementioned changes and no substantive changes had been made between the submission for which EPA proposed approval and the submission that TDEC provided in final form on July 15, 2016.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of TDEC Regulation TAPCR 1200–3–18–.24, entitled "Gasoline Dispensing Facilities," effective July 14, 2016. Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

III. Final Action

EPA is taking final action to approve Tennessee's July 15, 2016, SIP revision that changes Tennessee Gasoline Dispensing Facilities, Stage I and II Vapor Recovery, TAPCR rule 1200–03–18–.24. to: (1) Allow for the removal of the Stage II requirement and the orderly decommissioning of Stage II equipment; and (2) incorporate by reference Federal rule 40 CFR part 63, subpart CCCCCC, and remove certain non-state-specific requirements for the Stage I. EPA has determined that Tennessee's July 15, 2016, SIP revision related to the State's Stage I and II rules is consistent with the CAA and EPA's regulations and guidance.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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[1] EPA received a comment unrelated to the subject of this rulemaking. See the docket for today's rulemaking for this comment in its entirety.

[2] *See* 62 FR 27968 (May 22, 1997).

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 7, 2016.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart (RR)—Tennessee

■ 2. Section 52.2220(c), is amended under CHAPTER 1200–3–18 VOLATILE ORGANIC COMPOUNDS by revising the entry for "Section 1200–3–18–.24" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
	CHAPTER 1200–3–18 VOLATILE ORGANIC COMPOUNDS			
* *	* *	*	*	*
Section 1200–3–18–.24	Gasoline Dispensing Facilities	7/14/16	9/20/16 [Insert citation of publication].	
* *	* *	*	*	*

* * * * *

[FR Doc. 2016–22368 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–20860; PPWOCRADN0–PCU00RP14.R50000]

RIN 1024–AE28

Civil Penalties Inflation Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Correcting amendment.

SUMMARY: The Office of the Secretary of the Interior published a document in the **Federal Register** on June 28, 2016, adjusting the level of civil monetary penalties contained in U.S. Department of the Interior regulations implementing the Native American Graves Protection and Repatriation Act with an initial "catch-up" adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance. This document corrects the final regulations by fixing a mistake in the amount of one of the adjusted civil penalties.

DATES: This correction is effective on September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Jay Calhoun, Regulations Program Specialist, National Park Service, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: This is the second correction to the interim final rule published on June 28, 2016 (81 FR 41858). The first set of corrections was published on August 8, 2016 (81 FR 52352). These corrections were administrative and procedural relating to process for submitting comments. This second correction fixes a mistake in the amount of the civil penalty for continued failure to comply with requirements of the Native American Graves Protection and Repatriation Act. The rule stated the adjusted penalty was $1,268. The correct amount of the adjusted penalty is $1,286.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians-claims, Indians-lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

Accordingly, 43 CFR part 10 is corrected by making the following correcting amendment:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

§ 10.12 [Corrected]

■ 2. In § 10.12(g)(3), remove "$1,268" and add in its place "$1,286".

Dated: September 13, 2016.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–22565 Filed 9–19–16; 8:45 am]

BILLING CODE 4310–EJ–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–XE284

Pacific Island Pelagic Fisheries; 2016 U.S. Territorial Longline Bigeye Tuna Catch Limits for the Commonwealth of the Northern Mariana Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of a valid specified fishing agreement.

SUMMARY: NMFS announces a valid specified fishing agreement that allocates up to 1,000 metric tons of the 2016 bigeye tuna limit for the Commonwealth of the Northern Mariana Islands (CNMI) to identified U.S. longline fishing vessels. The agreement supports the long-term sustainability of fishery resources of the U.S. Pacific Islands, and fisheries development in the CNMI.

DATES: September 16, 2016.

ADDRESSES: Copies of a 2015 environmental assessment (EA), a 2016 supplemental EA (2016 SEA), and a finding of no significant impact, identified by NOAA–NMFS–2015–0140, are available from *www.regulations.gov*, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808–725–5176.

SUPPLEMENTARY INFORMATION: In a final rule published on September 14, 2016, NMFS specified a 2016 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for the U.S. Pacific Island territories of American Samoa, Guam and the CNMI (81 FR 63145). Of the 2,000 mt limit, NMFS allows each territory to allocate up to 1,000 mt to U.S. longline fishing vessels identified in a valid specified fishing agreement.

On September 9, 2016, NMFS received from the Council, a specified fishing agreement between the CNMI and Quota Management, Inc. (QMI). In the transmittal memorandum, the Council's Executive Director advised that the specified fishing agreement was consistent with the criteria set forth in 50 CFR 665.819(c)(1). NMFS reviewed the agreement and determined that it is consistent with the Pelagic FEP, the Magnuson-Stevens Fishery Conservation and Management Act, implementing regulations, and other applicable laws.

In accordance with 50 CFR 300.224(d) and 50 CFR 665.819(c)(9), vessels identified in the agreement may retain and land bigeye tuna in the western and central Pacific Ocean under the CNMI limit.

NMFS began attributing bigeye tuna caught by vessels identified in the agreement to the CNMI starting on September 9, 2016. If NMFS determines the fishery will reach the 1,000 mt attribution limit, we would restrict the retention of bigeye tuna caught by vessels identified in the agreement.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 15, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22619 Filed 9–16–16; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 182
Tuesday, September 20, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA68

Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a Notice of Proposed Rulemaking that would establish standards for identifying whether an indemnification payment by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, any of the Federal Home Loan Banks (regulated entities), or the Federal Home Loan Bank System's Office of Finance (OF) to an entity-affiliated party in connection with an administrative proceeding or civil action instituted by FHFA is prohibited or permissible. This proposed rule would not apply to a regulated entity operating in conservatorship or receivership, or to a limited-life regulated entity. It would apply to all regulated entities, each Federal Home Loan Bank, the OF, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Association, when not in conservatorship or receivership. This proposed rule takes into account public comments received by FHFA at various stages of the regulation's rulemaking process, including after the initial proposal published in 2009.

DATES: Comments must be received on or before November 21, 2016. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA68, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include Comments/RIN 2590–AA68 in the subject line of the message.
- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA68, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA68, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Mark D. Laponsky, Deputy General Counsel, *Mark.Laponsky@fhfa.gov,* (202) 649–3054 (this is not a toll-free number), Office of General Counsel (OGC), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of this 2016 proposed rulemaking and will take all comments into consideration before issuing the final rule. Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Constitution Center, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

FHFA published an Interim Final Rule on Golden Parachute and Indemnification Payments in the **Federal Register** on September 16, 2008 (73 FR 53356). Subsequently, it published corrections rescinding that portion of the regulation that addressed indemnification payments on September 19, 2008 (73 FR 54309) and on September 23, 2008 (73 FR 54673). On November 14, 2008, a proposed amendment to the Interim Final Rule was published in the **Federal Register** (73 FR 67424). FHFA specifically requested comments on whether it would be in the best interests of the regulated entities to permit indemnification of first and second tier civil money penalties where the administrative proceeding or civil action related to conduct occurring while the regulated entity was in conservatorship. The public notice and comment period closed on December 29, 2008. On January 29, 2009 (74 FR 5101), FHFA published a final rule on Golden Parachute Payments. On June 29, 2009 (74 FR 30975), FHFA published a proposed amendment to that 2009 Golden Parachute final rule. At the same time, FHFA re-proposed the November 14, 2008 proposed amendment on indemnification payments (2009 re-proposal). The 2009 re-proposal noted that comments received in response to the November 14, 2008 publication on indemnification payments would be considered along with comments received in response to the 2009 re-proposal. The golden parachute provisions of the rule were re-proposed in 2013 (78 FR 28452, May 14, 2013), adopted in final form in 2014 (79 FR 4394, Jan. 28, 2014), and codified as 12 CFR 1231.1, 1231.2, and 1231.5.

In this 2016 proposed rulemaking, FHFA redrafted the proposed indemnification payments rule to make it simpler and easier to understand. The substance of this 2016 proposed rulemaking has not changed since the 2009 re-proposal, other than to replace a provision concerning indemnification payments by regulated entities in conservatorship with one that clearly states that the regulation does not apply to such entities. FHFA further desires to clarify that it does not consider indemnification payments to be subject to FHFA rules and procedures related to compensation, including 12 CFR part 1230.

The 2009 re-proposal structured its indemnification provisions in a manner similar to the indemnification provisions of the Federal Deposit Insurance Corporation's (FDIC) regulation. 12 CFR part 369. This 2016 proposed rulemaking generally carries over the structure from the 2009 re-proposal, but clarifies several provisions. Consistent with the Director's statutory discretion to "prohibit or limit any . . . indemnification payment,"[1] the 2009 re-proposal defined most indemnification payments to entity-affiliated parties as impermissible. Like the FDIC's regulation, it also identified exceptions to that definition based on stated standards and criteria and defined the characteristics required for a payment to be permissible. These criteria and standards, as they are carried over into this 2016 proposed rulemaking, constitute the "factors" that would be used for the Director to "prohibit or limit" indemnification payments by this regulation. In application, each regulated entity would be required to ensure that no indemnification payments under this rule were made unless the criteria and standards were met.

III. Comments on the 2009 Re-Proposal

In response to the 2009 re-proposal, FHFA received comments from the following: The 12 Federal Home Loan Banks (Banks);[2] the Council of Federal Home Loan Banks, the Banks' Office of Finance (OF); Fannie Mae; and Freddie Mac. FHFA gave careful consideration to all issues raised by the commenters.

In response to FHFA's request for comments regarding indemnification of first and second tier civil money penalties under section 1376(b)(1) and (2) of the Federal Housing Enterprises Financial Safety and Soundness Act (the Safety and Soundness Act) (12 U.S.C. 4636(b)(1) and (2)) where the administrative proceeding or civil action initiated by FHFA relates to conduct occurring while the regulated entity was in conservatorship, several Banks requested that FHFA expand indemnification authority for first and second tier civil money penalties to all regulated entities, not just those that are in conservatorship (currently, Fannie Mae and Freddie Mac). The commenters assert that, by not extending the indemnification authority to all regulated entities, healthy, solvent institutions would be penalized by the regulation. FHFA has considered the comments and determined not to extend first and second tier civil money penalties indemnification to all regulated entities. The basis for the 2009 re-proposal's provision for regulated entities in conservatorship was that such regulated entities are operating with directors and some executives who govern and manage the entities in accordance with conservator or receiver instructions of varying levels of specificity and have significant limitations on their ability to take independent action. Given these circumstances, FHFA concluded that it was appropriate that regulated entities in conservatorship or receivership (or a limited-life regulated entity) and their entity-affiliated parties be subject to a different indemnification regime. FHFA continues to be of this view and has decided that they should be excluded from the rulemaking to avoid restricting a conservator's or receiver's options. In this 2016 proposed rulemaking, new § 1231.4(d)[3] would provide that the regulation does not apply to regulated entities in conservatorship or receivership or to limited-life regulated entities. In each circumstance, FHFA's power over such a regulated entity is sufficiently extensive that FHFA as conservator itself can directly require the adoption of an indemnification regime appropriate to administrating the conservatorship or receivership (or limited-life regulated entity) in the circumstances and environment actually encountered by that regulated entity.[4]

The 2009 re-proposal would have permitted partial indemnification when there has been a final adjudication, settlement, or finding favorable to the entity-affiliated party on some, but not all, charges, unless the proceeding or action resulted in a final prohibition order. Several Banks requested clarification of this provision with a definition of the term "final prohibition order." FHFA has considered the comment. The 2016 proposal clarifies that a final prohibition order is an order under section 1377 of the Act (12 U.S.C. 4636a) prohibiting an entity-affiliated party from continuing or commencing to hold any office in, or participate in any manner in the conduct of the affairs of, a regulated entity, which order has become and remains effective as described in section 1377(c)(5) of the Safety and Soundness Act (12 U.S.C. 4636a(c)(5)).

One commenter noted that, as a practical matter, most settlements do not include affirmative findings of non-violation; instead settlements typically include broad language stating that the settlement is entered into without admission. That commenter therefore requested that FHFA revise the language of the exception to "prohibited indemnification payment" in the previously proposed § 1231.2 to state that, unless the proceeding results in a final prohibition order, indemnification is permissible in connection with a settlement in which the entity-affiliated party does not admit wrongdoing. FHFA has considered the comment. This 2016 proposed rulemaking would permit payment of expenses of defending an action, subject to the entity-affiliated party's agreeing to repay those expenses if the entity-affiliated party: Is not exonerated of the charges to which the expenses specifically relate; enters into a settlement of those charges in which the entity-affiliated party admits culpability with respect to them; or is subject to a final order prohibiting the entity-affiliated party from participating in the affairs of the regulated entity. FHFA believes that within these reasonably flexible boundaries for permissible and impermissible indemnification, the parties involved will be able to negotiate an appropriate resolution of legal expenses, which may itself bar or significantly limit indemnification. This flexibility, in FHFA's view, is preferable to strictly dictating a result in a regulation.

Several Banks requested clarification of the scope of § 1231.4, in the 2009 re-proposal, with respect to application of its process involving specific findings by the regulated entity's board of directors after a good faith inquiry, reflected in § 1231.4(c). Specifically, the Banks sought clarity about whether the process was considered a precondition to the advancement of legal or professional expenses by a third-party insurer under insurance or bonds purchased by the regulated entity pursuant to the definition of "prohibited indemnification payments" in § 1231.4(b)(2)(i) of the 2009 re-proposal.[5] Under this 2016 proposed rulemaking, FHFA would not require a board of directors' inquiry and findings as a precondition for legal and professional expense advances paid directly to the entity-affiliated party by a third-party insurer under such insurance or bonds purchased by the regulated entity.

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[1] 12 U.S.C. 4518(e)(1).

[2] In 2015, the Seattle and Des Moines Federal Home Loan Banks merged. There are now 11 Federal Home Loan Banks.

[3] This 2016 proposed rulemaking includes changes to the numbering of several sections. In this Supplementary Information, the sections affected by this 2016 proposed rulemaking are identified by numbers used in the current proposal rather than those used in the 2009 re-proposal. Where necessary, a cross-reference to the 2009 re-proposal is provided in a footnote at the first appearance of an affected section number.

[4] *See* 12 U.S.C. 4617(b)(2)(A) (powers of FHFA as conservator or receiver), 4617(i)(2)(D), and 4617(i)(2)(E) (FHFA appoints the directors of a limited-life regulated entity and must approve its bylaws, in which an institution's indemnification policies commonly are embodied).

Several Banks requested confirmation that the issuance of a notice of charges in an administrative action and the filing of a complaint in a civil action would be the triggers for the indemnification provisions of § 1231.4(a), in these respective circumstances. These Banks are correct. Section 1231.4(a) is triggered by the Director issuing a notice of charges; or by the filing of a complaint in a civil action.

In connection with partial indemnification, one commenter requested a revision to the provision on "prohibited indemnification payments" in § 1231.4(b)(2)(i)[6] to provide that legal and professional fees incurred may be reimbursed on a proportional basis using the ratio of charges as to which the entity-affiliated party is entitled to reimbursement to the total charges. FHFA has considered the requested revision and has determined not to accept it. In many cases the appropriate amount of partial indemnification will be difficult to ascertain with certainty. The value of each charge may not equal each other charge. Services provided often will relate to multiple charges or all charges and cannot conveniently be segregated. FHFA believes that the appropriate amount of any partial indemnification is best determined on a case-by-case basis rather than by applying a predetermined formula.

The OF requested that the restriction on indemnification payments not apply to the OF; and further, confirmation that there is no intention by FHFA to assert that any funding provided by a Bank to the OF that might ultimately be used to indemnify an OF director or officer would be considered to be an indemnification payment by the Bank for purposes of the rule. FHFA considered the comment in connection with the Golden Parachute Final Rule (79 FR 4395) and determined that the OF is appropriately included in that final rule and for reasons of prudential supervision this 2016 proposed rulemaking also extends to the OF. In the Golden Parachute Final Rule, the definition of "entity-affiliated party," applying to all of part 1231, reads: "(1) With respect to the Office of Finance, any director, officer, or manager of the Office of Finance." 12 CFR 1231.2. This definition is appropriate because of those persons' participation in the conduct of the affairs of the Banks, specifically their funding activities.

Only the OF, including its board of directors, is responsible for OF's compliance; Banks themselves are not responsible for any improper indemnification payments by OF simply because the OF draws its funding from the Banks. However, a majority of the OF's board comprises the 11 Bank presidents, who would be responsible in their capacity as OF directors for approving indemnification payments in violation of this regulation. The issue does not require additional examination in the context of this 2016 proposal.

One commenter requested that the grandfathering provision relating to existing indemnification agreements (now reflected in § 1231.4(b)(4) of this 2016 proposed rulemaking) also be applicable to bylaw indemnification provisions that are asserted to be contractual in nature. The commenter also sought confirmation that any person who is covered by such an existing indemnification bylaw provision, which may be considered contractual, or an existing separate indemnification agreement will not be subject to any new restrictions contained in a final indemnification rule. FHFA considered the comment and determined that the grandfathering provisions are applicable only to specific indemnification agreements entered into by a regulated entity or the OF with a named entity-affiliated party on or before the day this 2016 proposed rulemaking is published in the **Federal Register**. In FHFA's view, only agreements of that type present equities that justify grandfathering. Accepting the argument that a Bank's bylaws are contractual in nature and that general indemnification provisions contained in them should be considered specific agreements and grandfathered could immunize a Bank's entire corps of managers and directors from the effect of this regulation in perpetuity.[7]

One commenter raised the issue of the standard to be used by a board of directors in conducting an investigation and making findings with respect to an entity-affiliated party. The comment suggested that for an entity-affiliated party to be eligible for advancement of expenses to the individual, the board of directors should find that the entity-affiliated party acted in good faith and in a manner that he or she believed to be in the best interests of the regulated entity. FHFA confirms that this 2016 proposed rulemaking intends that the board of directors conclude, after a good faith inquiry based on the information reasonably available to it and before agreeing to advance expenses, that the individual acted in a way that he or she believed to be in the best interest of the regulated entity or the OF. FHFA reminds the regulated entities and the OF that in addition to the standard set forth in this 2016 proposed rulemaking, they also have a concurrent obligation to follow proper corporate governance procedures in conducting their investigations.

A commenter asked about the selection of applicable state law for purposes of corporate governance practices and procedures, and indemnification consistent with the Office of Federal Housing Enterprise Oversight Corporate Governance Rule.[8] After considering the comment, FHFA has determined not to address the subject in this rulemaking. FHFA published a final rule on corporate governance that addresses this issue.[9] The regulated entities are reminded that an OF rule[10] authorizes the OF to select an appropriate body of governance law and to follow it with respect to practices and procedures related to indemnification, which would apply to the extent not inconsistent with this regulation.

FHFA considered a request by one Bank to allow indemnification by a ruling from the judge before whom the underlying case was heard, asserting that some jurisdictions recognize this as an alternative means by which a person may obtain indemnification. FHFA has determined not to accept the suggestion. FHFA believes that in actions brought by the Agency, the standards prescribed in this rule, within the framework of the Safety and Soundness Act, are the appropriate standards.

IV. Consideration of Differences between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between Fannie Mae and Freddie Mac (collectively, the Enterprises) and the Banks with respect to: the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; joint and several liability; and any other differences the Director considers appropriate. *See* 12 U.S.C. 4513(f). In preparing this 2016 proposed rulemaking, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the Banks should not be treated differently from the Enterprises for purposes of this 2016 proposed rulemaking. Any regulated entity in conservatorship (or receivership or a limited-life regulated entity), whether a Bank or an Enterprise, would be outside the scope of the proposed rule.

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[5] This provision was designated in the 2009 re-proposal as § 1231.2(2)(i).

[6] This provision was designated in the 2009 re-proposal as § 1231.2(2)(i).

[7] The restriction, of course, will not apply until a final rule reflecting it is adopted. FHFA considers it important to the integrity of indemnification regulation that bylaws are not routinely converted to individualized contracts, and therefore grandfathered, before a final rule becomes effective. FHFA believes it best to set the date of this 2016 proposed rulemaking's publication as the grandfathering date for individualized indemnification agreements.

[8] 12 CFR 1710.10, relocated and consolidated with revisions at 80 FR 72327 (Nov. 19, 2015), recodified at 12 CFR 1239.3.

[9] 12 CFR 1239.3, 80 FR 72327 (Nov. 19, 2015).

[10] 12 CFR 1273.7(i)(2).

V. Paperwork Reduction Act

This proposed rulemaking does not contain any information collection requirement that requires the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the 2016 proposed rulemaking under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that this 2016 proposed rulemaking, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because it would apply primarily to the regulated entities and the OF, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1231

Indemnification payments, Government-sponsored enterprises.

Accordingly, for reasons stated in the preamble, under the authority of 12 U.S.C. 4518(e) and 4526, FHFA proposes to amend part 1231 of subchapter B of chapter XII of title 12 of the CFR as follows:

PART 1231—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 1. The authority citation for part 1231 continues to read as follows:

Authority: 12 U.S.C. 4518(e), 4518a, 4526.

■ 2. In § 1231.2 add the definitions of "Indemnification payment" and "Liability or legal expense" in alphabetical order to read as follows:

§ 1231.2 Definitions.

* * * * *

Indemnification payment means any payment (or any agreement to make any payment) by any regulated entity or the OF for the benefit of any current or former entity-affiliated party, to pay or reimburse such person for any liability or legal expense.

Liability or legal expense means—

(1) Any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(2) The amount of, and the cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

* * * * *

■ 3. Add § 1231.4 to read as follows:

§ 1231.4 Indemnification payments.

(a) *Prohibited indemnification payments.* Except as permitted in paragraph (b) of this section, a regulated entity or the OF may not make indemnification payments with respect to an administrative proceeding or civil action that has been initiated by FHFA.

(b) *Permissible indemnification payments.* A regulated entity or the OF may pay:

(1) Premiums for professional liability insurance or fidelity bonds for directors and officers, to the extent that the insurance or fidelity bond covers expenses and restitution, but not a judgment in favor of FHFA or a civil money penalty.

(2) Expenses of defending an action, subject to the entity-affiliated party's agreement to repay those expenses if the entity-affiliated party either:

(i) When the proceeding results in an order, is not exonerated of the charges that the expenses specifically relate to; or

(ii) Enters into a settlement of those charges in which the entity-affiliated party admits culpability with respect to them; or

(iii) Is subject to a final prohibition order under 12 U.S.C. 4636a.

(3) Amounts due under an indemnification agreement entered into with a named entity-affiliated party on or prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(c) *Process; factors.* With respect to payments under paragraph (b)(2) of this section:

(1) The board of directors of the regulated entity or the OF must conduct a due investigation and make a written determination in good faith that:

(i) The entity-affiliated party acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the regulated entity or the OF; and

(ii) Such payments will not materially adversely affect the safety and soundness of the regulated entity or the OF.

(2) The entity-affiliated party may not participate in the board's deliberations or decision.

(3) If a majority of the board are respondents in the action, the remaining board members may approve payment after obtaining written opinion of outside counsel that the conditions of this regulation have been met.

(4) If all of the board members are respondents, they may approve payment after obtaining written opinion of outside counsel that the conditions of this regulation have been met.

(d) *Scope.* This section does not apply to a regulated entity operating in conservatorship or receivership or to a limited-life regulated entity.

Dated: September 13, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–22483 Filed 9–19–16; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–6137; Notice No. 25–16–05–SC]

Special Conditions: The Boeing Company Model 787–10 Airplane; Aeroelastic Stability Requirements, Flaps-Up Vertical Modal-Suppression System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Company (Boeing) Model 787–10 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a flaps-up vertical modal-suppression system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before November 4, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–6137 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wael Nour, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2143; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On July 30, 2013, Boeing applied for an amendment to type certificate no. T00021SE to include the new Model 787–10 airplane. This airplane is a stretched-fuselage derivative of the 787–9, currently approved under type certificate no. T00021SE, with maximum single-class seating capacity of 440 passengers. The 787–10 has a maximum takeoff weight of 560,000 lbs and is powered by two General Electric GEnx-1B/P2 or Rolls-Royce Trent 1000 engines.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 787–10 airplane meets the applicable provisions of the regulations listed in type certificate no. T00021SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions. Type certificate no. T00021SE will be updated to include a complete description of the certification basis for this airplane model.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 787–10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 787–10 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Model 787–10 airplane will incorporate the following novel or unusual design features:

A flaps-up vertical modal suppression system.

Discussion

The Boeing Model 787–10 will add a new flaps-up vertical modal-suppression (F0VMS) system to the Normal mode of the primary flight-control system (PFCS). The F0VMS system is needed to satisfy the flutter-damping margin requirements of § 25.629 and the means-of-compliance provisions in advisory circular (AC) 25.629–1B. This system will be used in lieu of typical methods of improving the flutter characteristics of an airplane, such as increasing the torsional stiffness of the wing or adding wingtip ballast weights.

The F0VMS system is an active modal-suppression system that will provide additional damping to an already stable, but low-damped, 3Hz symmetric wing, nacelle, and body aeroelastic mode of the airplane. This feedback-control system will compensate for a flutter-damping margin deficiency of the airplane and maintain adequate damping margins to flutter. The F0VMS system accomplishes this by oscillating the elevators, and, when needed, the flaperons.

Because Boeing's flutter analysis shows that the 3Hz mode is stable and does not flutter, the F0VMS system is not an active flutter-suppression system, but, rather, a damping-augmentation system. At this time, the FAA is not prepared to accept an active flutter-suppression system that suppresses a divergent flutter mode in the operational or design envelope of the airplane.

This will be the first time an active modal-suppression system will be used to compensate for a flutter-damping margin deficiency for § 25.629 compliance, and the FAA intends to take a conservative approach in the technology's application. The FAA considers the use of this new active modal-suppression system for flutter compliance to be novel or unusual when compared to the technology envisioned in the current airworthiness standards. Consequently, special conditions are required in consideration of the effects of this new system on the aeroelastic stability of the airplane, both in the normal and failed state, to maintain the level of safety intended by § 25.629.

The stretched body of the 787–10 degrades the 3Hz symmetric wing, nacelle, and body aeroelastic mode relative to the 787–9. The 3Hz aeroelastic mode of the 787–10 airplane without the F0VMS system does not meet the damping margin criteria of AC 25.629–1B within the operational envelope, as well as the design envelope, of the airplane. The 3Hz mode is not predicted to flutter, but has a lack of adequate flutter-damping margin for the airplane. Boeing has determined that typical methods of improving the flutter characteristics of the airplane, such as increasing the torsional stiffness of the wing or adding wingtip ballast weights, do not meet their business objectives. Consequently, Boeing is adding a new F0VMS system to the Normal mode of the Model 787–10 airplane PFCS to satisfy the flutter-damping margin requirements of § 25.629, and means-of-compliance provisions contained in AC 25.629–1B. The F0VMS system will be active in certain parts of the flight envelope when the flaps are retracted. The F0VMS system is a feedback-control system that adds damping to the system's 3Hz mode by oscillating the elevators symmetrically. When the elevators are expected to be ineffective due to blowdown or other limitations, the flaperons are applied to augment or supplant elevator-control input. However, the flaperons are not as effective as the elevators in providing additional damping to the 3Hz mode.

The F0VMS system will be an integral part of the PFCS Normal mode and use existing hardware, including inertial and air-data sensors. As such, the F0VMS system is expected to be as reliable as the Normal mode itself. In other words, any failures that would cause a loss of the F0VMS function would also cause a loss of the Normal mode. FAA issue paper SA–17, "Command Signal Integrity," requires that the probability of an automatic change from Normal mode to a degraded mode of the PFCS should occur with a frequency less than 10^{-7} per flight hour, irrespective of flight phase. This reliability is acceptable for the F0VMS system meeting the flutter-damping margins of § 25.629 and AC 25.629–1B, and the requirements of these special conditions. The F0VMS function is only available in the PFCS Normal mode, and not available in the Secondary or Direct modes. However, the PFCS Secondary and Direct modes include a simplified modal-suppression function, which provides additional damping margin.

In addition to the Model 787–10 airplane needing the F0VMS functionality for flutter compliance, this functionality will also be used for active nacelle gust-load alleviation (NGLA), because the low damping exhibited by the 3Hz mode adversely affects nacelle gust loads. Therefore, the Boeing Model 787–9 airplane NGLA system will not need to be carried over to the Model 787–10 airplane.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 787–10 airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 787–10 airplanes.

The following special conditions are proposed to address the aeroelastic stability of the 787–10 airplane with the F0VMS system as an integral part of the PFCS Normal mode:

Analytical Flutter-Clearance Requirements

1. The airplane in the PFCS Normal mode (which includes F0VMS) must meet the nominal (no failures) flutter and aeroelastic stability requirements of § 25.629(b)(1), and the damping-margin criteria of AC 25.629–1B, Section 7.1.3.3. Figure 1, below, illustrates the Damping versus Airspeed plot.

a. The aeroservoelastic analysis must take into account the effect of the following items:

i. Significant structural and aerodynamic nonlinearities.

ii. Significant F0VMS nonlinearities, including control-surface rate and displacement saturation, and blowdown.

iii. The range of design maneuver load factors.

iv. Control surface freeplay.

v. Any other items that may affect the performance of the F0VMS system in maintaining adequate modal damping margins.

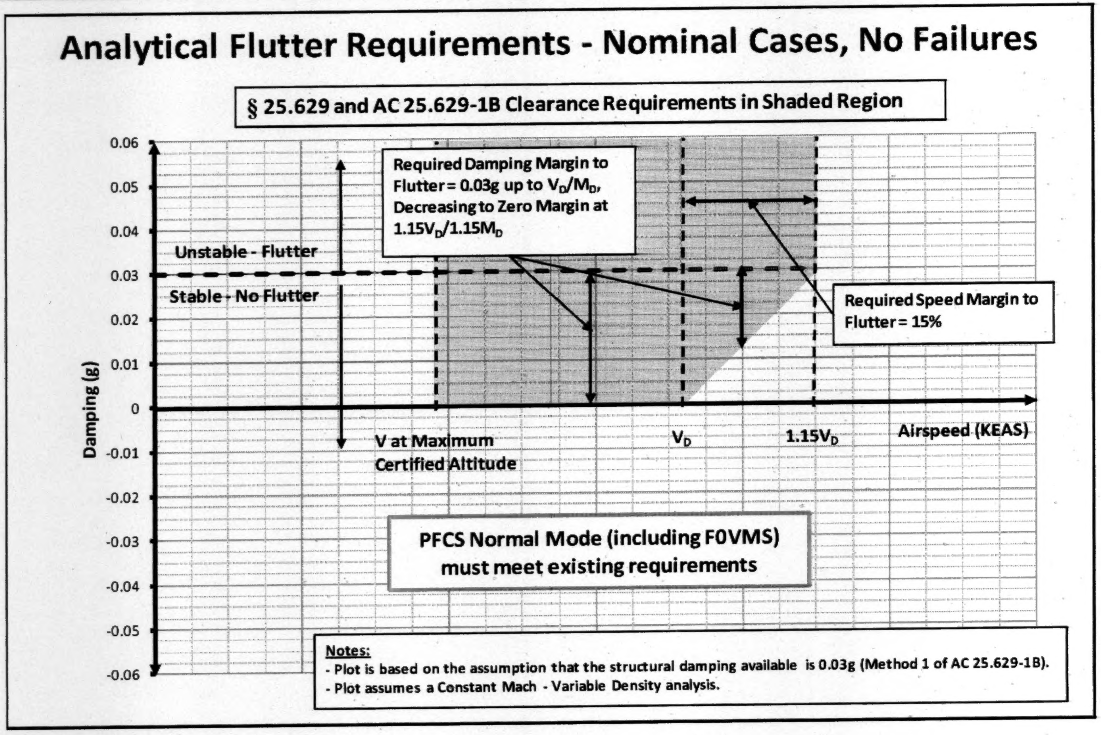

Figure 1: Damping vs. Airspeed; PFCS Normal mode, F0VMS system operative

2. The airplane in the PFCS Normal mode, but with the F0VMS system inoperative, must exhibit a damping margin to flutter of 0.015g within the V_D/M_D envelope, linearly decreasing (in KEAS) to zero damping margin to flutter at 1.15 V_D/1.15 M_D, limited to Mach 1.0. That is, the 3Hz mode should not cross the g = 0.015 line below V_D, or the g = 0.03 line below 1.15 V_D, assuming the use of analysis Method 1 of AC 25.629–1B, Section 7.1.3.3. Figure 2, below, illustrates the Damping versus Airspeed plot.

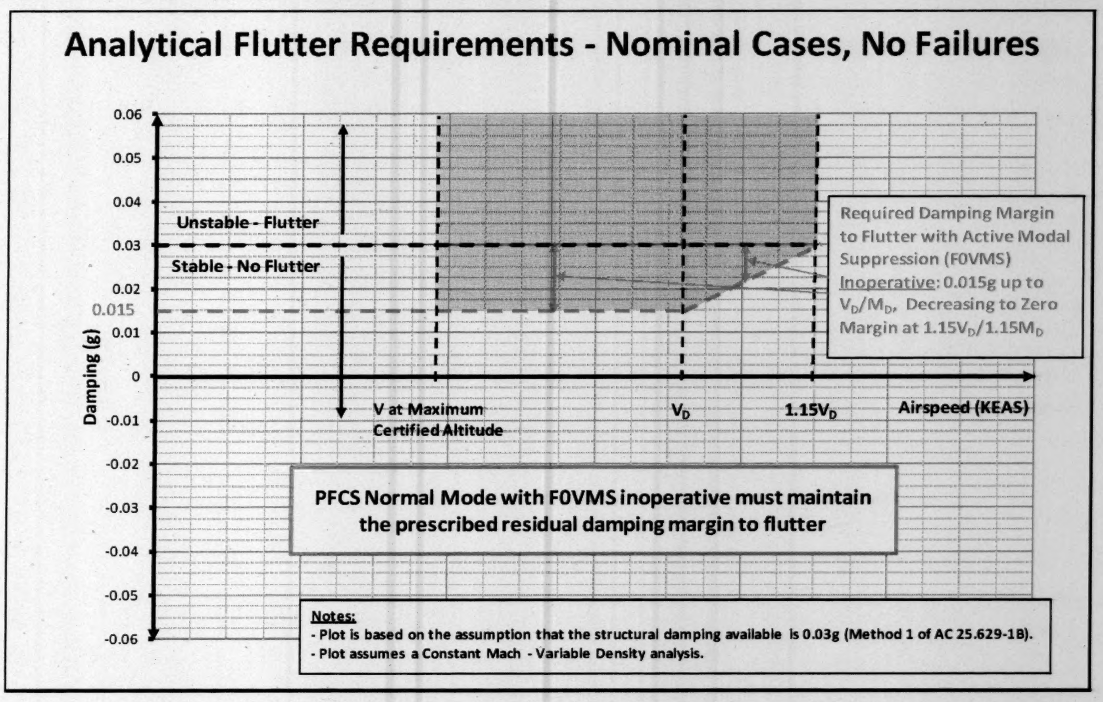

Figure 2: Damping vs. Airspeed; PFCS Normal mode, F0VMS system inoperative

3. The airplane in the PFCS Normal mode (which includes F0VMS) must meet the fail-safe flutter and aeroelastic stability requirements of § 25.629(b)(2), and the damping-margin criteria of AC 25.629–1B, Section 7.1.3.5.

4. The airplane in the PFCS Secondary and Direct modes must meet the fail-safe flutter and aeroelastic-stability requirements of § 25.629(b)(2), and the damping-margin criteria of AC 25.629–1B, Section 7.1.3.5.

Issued in Renton, Washington, on September 9, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22547 Filed 9–19–16; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–10209, 34–78845, 39–2511, IA–4530, IC–32263; File No. S7–21–16]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities.

DATES: Comments should be submitted by October 20, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number [S7–21–16] on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–21–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202–551–5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600–611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission during the next 12 months. The list includes 11 rules adopted by the Commission in 2005.

Title: XBRL Voluntary Financial Reporting Program on the EDGAR System.

Citation: 17 CFR 229.601; 17 CFR 232.401; 17 CFR 232.402; 17 CFR 232.11; 17 CFR 232.305; 17 CFR 240.13a–14; 17 CFR 240.15d–14; 17 CFR 249.220f; 17 CFR 249.306; 17 CFR 270.8b–1; 17 CFR 270.8b–2; 17 CFR 270.8b–33; and 17 CFR 270.30a–2.

Authority: 15 U.S.C. 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77s(a), 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77sss(a), 77ttt, 78c, 78c(b), 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78u–5, 78w, 78w(a), 78x, 78*ll*, 78*ll*(d), 78mm, 79e, 79j, 79n, 79q, 79t, 79t(a), 80a–1, 80a–8, 80a–9, 80a–20, 80a–23, 80a–29, 80a–30, 80a–31(c), 80a–34, 80a–37, 80a–38(a), 80a–39, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350.

Description: The amendments enable registrants to submit voluntarily supplemental tagged financial information using the eXtensible Business Reporting Language (XBRL) format as exhibits to specified EDGAR filings under the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Company Act of 1940. Registrants choosing to participate in the voluntary program also will continue to file their financial information in HTML or ASCII format, as currently required. To participate in the program, volunteers are required to submit their XBRL formatted information in accordance with the amendments. The voluntary program is intended to help the Commission evaluate the usefulness of data tagging and XBRL to registrants, investors, the Commission and the marketplace.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8529 (Feb. 3, 2005). The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the proposing release, Release No. 33–8496 (Sept. 27, 2004), at that time.

* * * * *

Title: Mutual Fund Redemption Fees, request for additional comment.

Citation: 17 CFR 270.22c–2; 17 CFR 270.11a–3.

Authority: 15 U.S.C. 80a–6(c), 80a–11(a), 80a–22(c) and 80a–37(a).

Description: The Commission adopted a new rule that allows registered open-end investment companies ("funds") to impose a redemption fee, not to exceed two percent of the amount redeemed, to be retained by the fund. The redemption fee is intended to allow funds to recoup some of the direct and indirect costs incurred as a result of short-term trading strategies, such as market timing. The new rule also requires most funds to enter into written agreements with intermediaries (such as broker-dealers and retirement plan administrators) that hold shares on behalf of other investors, under which the intermediaries must agree to provide funds with certain shareholder identity and transaction information at the request of the fund and carry out certain instructions from the fund.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC–26782 (Mar. 11, 2005). The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the proposing release, Release No. IC–26375A (Mar. 5, 2004), at that time.

* * * * *

Title: First-Time Application of International Financial Reporting Standards.

Citation: 17 CFR 249.220f.

Authority: 15 U.S.C. 78a *et seq.*, and 7201 *et seq.*; and 18 U.S.C. 1350.

Description: The Commission adopted amendments to Form 20–F to provide a one-time accommodation relating to financial statements prepared under International Financial Reporting Standards ("IFRS") for foreign private issuers registered with the SEC. This accommodation applies to foreign private issuers that adopt IFRS prior to or for the first financial year starting on or after January 1, 2007. The accommodation permits eligible foreign private issuers for their first year of reporting under IFRS to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure. In addition, the Commission amended Form 20–F to require certain disclosures of all foreign private issuers that change their basis of accounting to IFRS.

Prior Commission Determination Under 5 U.S.C. 601: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that amending Exchange Act Form 20–F would not have a significant economic impact on a substantial number of small entities. The certification was incorporated in the proposing release, Release No. 33–8397 (Mar. 11, 2004). As stated in the adopting release, Release No. 33–8567 (Apr. 12, 2005), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Regulation NMS: Final Rules and Amendments to Joint Industry Plans.

Citation: 17 CFR 200.30–3, 17 CFR 200.800, 17 CFR 201.101, 17 CFR 230.144, 17 CFR 240.0–10, 17 CFR 240.3a51–1, 17 CFR 240.3b–16, 17 CFR 240.10a–1, 17 CFR 240.10b–10, 17 CFR 10b–18, 17 CFR 240.11Aa2–1–Ac1–6, 17 CFR 240.12a–7, 17 CFR 240.12f–1, 17 CFR 240.12f–2, 17 CFR 240.15b9–1, 17 CFR 240.15c2–11, 17 CFR 240.19c–3, 17 CFR 240.19c–4, 17 CFR 240.31, 17 CFR 242.100, 17 CFR 242.300, 17 CFR 242.301, 17 CFR 242.600–612, 17 CFR 249.1001, 17 CFR 270.17a–7.

Authority: 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k–1, 78o, 78o–3, 78q(a) and (b), 78s; 78w(a), and 78mm, and Rules 11Aa3–2(b)(2) and 11Aa3–2(c)(1) thereunder, 17 CFR 240.11Aa3–2(b)(2) and 17 CFR 240.11Aa3–2(c)(1).

Description: The Commission adopted rules under Regulation NMS and two amendments to the joint industry plans for disseminating market information. The new rules were designed to modernize and strengthen the regulatory structure of the U.S. equity markets. The "Order Protection Rule" requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. The "Access Rule" requires fair and non-discriminatory access to quotations, establishes a limit on access fees to harmonize the pricing of quotations across different trading centers, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross automated quotations. The "Sub-Penny Rule" prohibits market participants from accepting, ranking, or displaying orders, quotations, or indications of interest in a pricing increment smaller than a penny, except for orders, quotations, or indications of interest that are priced at less than $1.00 per share. The Commission also adopted amendments to the "Market Data Rules" that updated the requirements for consolidating, distributing, and displaying market information, as well as amendments to the joint industry plans for disseminating market information that modified the formulas for allocating plan revenues (the "Allocation Amendment") and broadened participation in plan governance (the "Governance Amendment"). Finally, the Commission redesignated the national market system rules previously adopted under Section 11A of the Exchange Act.

Prior Commission Determination Under 5 U.S.C. 610: With respect to the Order Protection Rule, pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the reproposing release.[1] As stated in Release No. 34–51808 (June 9, 2005) (adopting release), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification. With respect to the Access Rule (Rule 610 and the amendments to Rule 301 of Regulation ATS), pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the reproposing release. As stated in the adopting release, the Commission considered one comment it received regarding the certification in the reproposing release with respect to the Access Rule at that time. With respect to the Sub-Penny Rule, a Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adopting release. As stated in the adopting release, the Commission received no comments addressing the Initial Regulatory Flexibility Analysis prepared in the proposing release or the substantially identical one set forth in the reproposing release. With respect to the Allocation Amendment, pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the reproposing release. As stated in the adopting release, the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification. Finally, with respect to the Governance Amendment (amending Exchange Act Rules 11Aa3–1 and 11Ac–12 by redesignating them as Rules 601 and 603), a Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Adopting Release. As stated in the adopting release, the Commission received no comments addressing the Initial Regulatory Flexibility Analysis prepared in the proposing release or the substantially identical one set forth in the reproposing release.

* * * * *

Title: Amendments to the Penny Stock Rules.

Citation: 17 CFR 240.3a51–1, 240.15g–2, 240.15g–9, and 240.15g–100.

Authority: 15 U.S.C. 78c(a)(51)(B), 78c(b), 78o(c), 78o(g), and 78w(a).

Description: The Commission amended the definition of "penny stock" as well as the requirements for providing certain information to penny stock customers. The amendments were designed to address market changes, evolving communications technology and legislative developments.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34–49037 (Jan. 8, 2004). As stated in the adopting release, Release No. 34–51983 (July 7, 2005), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Removal from Listing and Registration of Securities Pursuant to Section 12(d) of the Securities Exchange Act of 1934.

Citation: 17 CFR 232.101; 17 CFR 240.12d2–2; 17 CFR 240.19d–1; 17 CFR 249.25.

Authority: 15 U.S.C. 77c, 77d, 77f, 77g, 77h, 77j, 77s, 77s(a), 77sss(a), 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78a, 78c, 78c(b), 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78u–5, 78w, 78w(a), 78x, 78*ll*, 78*ll*(d), 78mm, 79q, 79t, 79t(a), 80a–8, 80a–20, 80a–23, 80a–29, 80a–30, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

Description: The Commission adopted amendments to its rules and Form 25 to streamline the procedures for removing from listing, and withdrawing from registration, securities under Section 12(b) of the Exchange Act. The final rules require all issuers and national securities exchanges seeking to delist and/or deregister a security in accordance with the rules of an exchange and the Commission to file the amended Form 25 in an electronic format with the Commission on the EDGAR database. The final rules also provide that Form 25 serves as an exchange's notice to the Commission under Section 19(d) of the Exchange Act. Finally, the final rules exempt, on a permanent basis, standardized options and security futures products traded on a national securities exchange from Section 12(d) of the Exchange Act.

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[1] The Commission originally proposed Regulation NMS in February 2004, Release No. 34–49325 (Feb. 26, 2004) (proposing release). It issued a supplemental request for comment in May 2004. Release No. 34–49749 (May 20, 2004). On December 16, 2004, the Commission reproposed Regulation NMS in its entirety for public comment. Release No. 34–50870 (Dec. 16, 2004) (reproposing release).

Prior Commission Determination Under 5 U.S.C. 601: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that amending Rule 12d2–2 and Rule 25 would not have a significant impact on a substantial number of small entities. The certification was incorporated in the proposing release, Release No. 34–49858 (June 15, 2004). As stated in the adopting release, Release No. 34–52029 (July 14, 2005), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies.

Citation: 17 CFR 230.405; 239.16b; 240.12b–2; 240.13a–14; 240.13a–19; 240.15d–14; 240.15d–19; 249.220f; 249.308; 249.308a; and 249.310.

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78a *et seq.*, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78t, 78u–5, 78w, 78w(a), 78x, 78*ll*, 78*ll*(d), 78mm, 78q, 78s, 78u–5, 78w, 78x, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–20, 80a–23, 80a–24, 80a–26, 80a–28, 80a–29, 80a–30, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 18 U.S.C. 1350.

Description: The Commission adopted rules and rule amendments relating to filings by reporting shell companies. The rule and rule amendments define a "shell company" as a registrant with no or nominal operations and either no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets. The rules and rule amendments prohibit the use of Form S–8 under the Securities Act of 1933 ("Securities Act") by shell companies. In addition, they require a shell company that is reporting an event that causes it to cease being a shell company to disclose the same type of information that it would be required to provide in registering a class of securities under the Exchange Act. These provisions are intended to protect investors by deterring fraud and abuse in our securities markets through the use of reporting shell companies.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–8587 (July 15, 2005). The Commission requested comment on the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8407 (Apr. 15, 2004), but as stated in the adopting release, received no comments in response to this request.

* * * * *

Title: Rulemaking for EDGAR System.

Citation: 17 CFR 232.11; 17 CFR 232.101; 17 CFR 232.102; 17 CFR 232.201; 17 CFR 232.311; 17 CFR 232.313; 17 CFR 239.64; 17 CFR 249.444; 17 CFR 259.603; 17 CFR 269.8; 17 CFR 274.403; 17 CFR 239.65; 17 CFR 249.447; 17 CFR 259.604; 17 CFR 269.10; 17 CFR 274.404.

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 79c, 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a– 29, 80a–30, and 80a–37.

Description: The Commission adopted amendments requiring that certain open-end management investment companies and insurance company separate accounts identify in their Electronic Data Gathering Analysis, and Retrieval (EDGAR) submissions information relating to their series and classes (or contracts, in the case of separate accounts). In addition, the Commission added two investment company filings to the list of those that must be filed electronically and made several minor and technical amendments to rules governing the electronic filings through EDGAR.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC–26990 (July 18, 2005). The Commission solicited comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. IC–26388 (Mar. 6, 2004), but, as stated in the adopting release, received no comments on that analysis.

* * * * *

Title: Securities Offering Reform.

Citation: 17 CFR 200.30–1; 17 CFR 229.512; 17 CFR 230.134; 17 CFR 230.137; 17 CFR 230.138; 17 CFR 230.139; 17 CFR 230.153; 17 CFR 230.158; 17 CFR 230.159; 17 CFR 230.159A; 17 CFR 230.163; 17 CFR 230.163A; 17 CFR 230.164; 17 CFR 230.168; 17 CFR 230.169; 17 CFR 230.172; 17 CFR 230.173; 17 CFR 230.174; 17 CFR 230.401; 17 CFR 230.405; 17 CFR 230.408; 17 CFR 230.412; 17 CFR 230.413; 17 CFR 230.415; 17 CFR 230.418; 17 CFR 230.424; 17 CFR 230.426; 17 CFR 230.430A; 17 CFR 230.430B; 17 CFR 230.430C; 17 CFR 230.433; 17 CFR 230.439; 17 CFR 230.456; 17 CFR 230.457; 17 CFR 230.462; 17 CFR 230.473; 17 CFR 230.497; 17 CFR 230.902; 17 CFR 239.11; 17 CFR 239.13; 17 CFR 239.25; 17 CFR 239.31; 17 CFR 239.33; 17 CFR 239.34; 17 CFR 240.14a–2; 17 CFR 243.100; 17 CFR 249.210; 17 CFR 249.220f; 17 CFR 249.308a; 17 CFR 249.310; 17 CFR 239.14; and 17 CFR 274.11a–1.

Authority: 15 U.S.C. 77b, 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77o, 77r, 77s, 77sss, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78a, 78c, 78c(b), 78d, 78d–1, 78d–2, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78t, 78u–5, 78w, 78w(a); 78x, 78*ll*, 78*ll*(d), 78mm,79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–20, 80a–23, 80a–24, 80a–26, 80a–28, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–3, 80b–4, 80b–11, 7201, 7202, and 18 U.S.C. 1350.

Description: The Commission adopted rules to modify and advance significantly the registration, communications, and offering processes under the Securities Act. The rules eliminate unnecessary and outmoded restrictions on offerings. In addition, the rules provide more timely investment information to investors without mandating delays in the offering process that the Commission believes would be inconsistent with the needs of issuers for timely access to capital. The rules also continue the Commission's long-term efforts toward integrating disclosure and processes under the Securities Act and the Exchange Act. The rules further these goals by addressing communications related to registered securities offerings, delivery of information to investors, and procedural aspects of the offering and capital formation processes.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8591 (July 19, 2005). The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the proposing release, Release No. 33–8501 (Nov. 3, 2004), at that time.

* * * * *

Title: Ownership Reports and Trading by Officers, Directors and Principal Security Holders.

Citation: 17 CFR 229.405; 17 CFR 240.16b–3; and 17 CFR 240.16b–7.

Authority: 15 U.S.C. 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25),77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m,78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79e, 79j, 79n, 79q, 79t, 80a–8, 80a–9, 80a–20, 80a–23, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

Description: The Commission adopted amendments to two rules that exempt certain transactions from the private right of action to recover short-swing profit provided by Section 16(b) of the Exchange Act. The amendments were intended to clarify the exemptive scope of these rules, consistent with statements in previous Commission releases. The Commission also amended Item 405 of Regulation S–K to harmonize this item with the two-business day Form 4 due date and mandated electronic filing and Web site posting of Section 16 reports.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8600 (Aug. 3, 2005). The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the proposing release, Release No. 34–49895 (June 21, 2004), at that time.

* * * * *

Title: Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports.

Citation: 17 CFR 210.3–01; 17 CFR 210.3–09; 17 CFR 210.3–12; 17 CFR 229.101; 17 CFR 240.12b–2; 17 CFR 240.13a–10; 17 CFR 240.15d–10; 17 CFR 249.308a; 17 CFR 249.310; and 17 CFR 249.220f.

Authority: 15 U.S.C. 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78a, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78o(d), 78q, 78s, 78u–5, 78w, 78w(a), 78x, 78*ll*, 78mm, 79e, 79e(b), 79j, 79j(a), 79n, 79q, 79t, 79t(a), 80a–8, 80a–9, 80a–20, 80a–23, 80a–29, 80a–30, 80a–31, 80a–31(c), 80a–37, 80a–37(a), 80a–38(a), 80a–39, 80b–3, 80b–4, 80b–11, 7201, 7202, 7262; and 18 U.S.C. 1350.

Description: The Commission adopted amendments to the accelerated filing deadlines that apply to periodic reports so that a "large accelerated filer" (an Exchange Act reporting company with a worldwide market value of outstanding voting and non-voting common equity held by non-affiliates of $700 million or more) became subject to a 60-day Form 10–K annual report filing deadline, beginning with the annual report filed for its first fiscal year ending on or after December 15, 2006. Prior to that date, large accelerated filers were subject to a 75-day annual report deadline. Under the amendments, accelerated filers and large accelerated filers continue to be required to file their Form 10–Q quarterly reports under a 40-day deadline, rather than the 35-day deadline that was scheduled to apply under the previously existing rules. Further, the amendments revise the definition of the term "accelerated filer" to permit an accelerated filer that has voting and non-voting common equity held by non-affiliates of less than $50 million to exit accelerated filer status at the end of the fiscal year in which its equity falls below $50 million and to file its annual report for that year and subsequent periodic reports on a non-accelerated basis. Finally, the amendments permit a large accelerated filer that has voting and non-voting common equity held by non-affiliates of less than $500 million to exit large accelerated filer status at the end of the fiscal year in which its equity falls below $500 million and to file its annual report for that year and subsequent periodic reports as an accelerated filer, or a non-accelerated filer, as appropriate.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8644 (Dec. 21, 2005). The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the proposing release, Release No. 33–8617 (Sept. 22, 2005), at that time.

By the Commission.

Dated: September 15, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22563 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2016–0008; Notice No. 162]

RIN 1513–AC32

Proposed Expansion of the Outer Coastal Plain Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to expand the approximately 2.25 million-acre "Outer Coastal Plain" viticultural area in southeastern New Jersey by approximately 32,932 acres. The established Outer Coastal Plain viticultural area and the proposed expansion area do not lie within any other viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by November 21, 2016.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *Internet: http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2016–0008 at "*Regulations.gov*," the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth the standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing the establishment of an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same procedures to request changes involving existing AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the region within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition To Expand the Outer Coastal Plain AVA

TTB received a petition from John and Jan Giunco, owners of 4JG's Orchards and Vineyards in Colts Neck, New Jersey, proposing to expand the established "Outer Coastal Plain" AVA in southeastern New Jersey. The Outer Coastal Plain AVA (27 CFR 9.207) was established by T.D. TTB–58, which published in the **Federal Register** on February 9, 2007 (72 FR 6165). The Outer Coastal Plain AVA covers approximately 2.25 million acres in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean, and Salem Counties, New Jersey. The Outer Coastal Plain AVA and the proposed expansion area are not located within any other AVA.

The proposed expansion area is located in Monmouth County, adjacent to the western edge of the existing Outer Coastal Plain AVA boundary, and covers approximately 32,932 acres. One commercial vineyard covering a total of 30 acres is located within the proposed expansion area. The vineyard also has its own winery. The vineyard and the winery both existed at the time the Outer Coastal Plain AVA was established in 2007. The petitioners for the expansion of the AVA claim that when the AVA was established, the region of the proposed expansion was intended to be included in the AVA but was inadvertently omitted. The petitioners state that they only recently learned that they are not within the AVA's boundaries. The petition includes a letter from the current president of the Outer Coastal Plain Vineyard Association stating that the petitioners are vineyard owners who have been members of that Association since 2006. The letter also states that the association supports the proposed expansion.

According to the petition, the soils, elevation, and climate of the proposed expansion area are similar to those of the established AVA. Unless otherwise noted, all information and data pertaining to the proposed expansion area contained in this document come from the petition and its supporting exhibits.

Name Evidence

T.D. TTB–58, which established the Outer Coastal Plain AVA, states that New Jersey has five defined physiographic regions, and the physiographic region in which the established AVA is located is called the "Outer Coastal Plain." The expansion petition includes several items that directly associate the proposed expansion area with the Outer Coastal Plain region. A Web site dedicated to the botany of New York, New Jersey, and Connecticut features a listing of recreational areas titled "New Jersey Natural Areas: Outer Coastal Plain." [1] Included on this list are parks within the proposed expansion area, including Dorbrook Recreation Area in Colts Neck and the Durand Park Memorial Arboretum in Freehold Township. An article prepared by the Monmouth County Health Department, titled "Natural and Cultural Features of Monmouth County," states that the Mount Pleasant Hills extend "from Keyport southwest through Imlaystown to the Delaware Bay in Salem County, and [form] the drainage divide between the Inner and Outer Coastal Plain." [2] The petitioner notes that because Imlaystown is west of the proposed expansion area, this definition of the divide between the Inner and Outer

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[1] *http://nynjctbotany.org/njouter/njoptofc.html.*

[2] *http://co.monmouth.nj.us/documents/121%5CNaturalFeatures.pdf.*

Coastal Plains places the proposed expansion area within the Outer Coastal Plain. A geological and water survey map from the New Jersey Department of Environmental Protection shows the location of a well within Colts Neck Township near the western limits of the Outer Coastal Plain.[3] Finally, a visitors' guide for southern New Jersey, compiled by the South Jersey Tourism Corporation, includes a section on the Outer Coastal Plain AVA. The 4JG's Vineyards, which is owned by the petitioner, is included in a listing of wineries within the AVA. TTB notes that although the petitioner's vineyard is not technically within the boundaries of the Outer Coastal Plain AVA, its inclusion in the listing demonstrates that tourism organizations and visitors currently associate the proposed expansion area with the AVA.

Boundary Evidence

The current Outer Coastal Plain AVA spans the southeastern portion of New Jersey, from the Cape May Peninsula to just south of Raritan Bay. The Atlantic Ocean forms the eastern boundary. The southwestern boundary follows the shore of Delaware Bay. The western boundary follows a belt of low hills called cuestas, which separate the physiographic region known as the Outer Coastal Plain from the region known as the Inner Coastal Plain. A small portion of the Outer Coastal Plain AVA's current western boundary forms a rough angle bracket shape (">"), where the land between the upper and lower arms of the ">" is not within the AVA. The townships of Colts Neck, Freehold, Holmdel, and Marlboro, as well as the unincorporated community of Crawford Corners, are located within this sharp angle in the AVA boundary.

The proposed expansion area is located within this sharp angle in the Outer Coastal Plain AVA's boundary, with the angle forming the northern, eastern, and southern edges of the proposed expansion area. The proposed changes would eliminate the ">" in the AVA's current western boundary by moving the AVA's boundary westward to incorporate the land within the ">" into the Outer Coastal Plain AVA. The proposed boundary change would begin in Freehold, at the intersection of Colts Neck Road, West Main Street, and State Route 79, which is the beginning point of the bottom segment of the ">" in the current AVA boundary. However, instead of following Colts Neck Road eastward to form the bottom segment of the ">", the proposed boundary would instead follow State Route 79 northeasterly, then northerly, to the unincorporated community of Wickatunk. The proposed boundary would then proceed generally east along a series of roads, reconnecting with the current AVA boundary at the Garden State Parkway near the community of Crawford Corners, which is near the tip of the top segment of the ">" in the current boundary.

The proposed expansion area is surrounded by the current Outer Coastal Plain AVA to the north, east, and south. The Inner Coastal Plain physiographic region of New Jersey, marked by the belt of cuestas, begins west of the proposed expansion area. Elevations west of the proposed expansion area begin to increase, as shown on the elevation map included with the proposed expansion petition.

Distinguishing Features

According to the proposed expansion petition, the soil, elevation, and climate of the proposed expansion area are similar to those of the established Outer Coastal Plain AVA.

Soil

According to T.D. TTB–58, which established the Outer Coastal Plain AVA, the soils of the AVA are primarily well-drained, sandy soils derived from unconsolidated sediments. The soils are described as having low pH levels and low fertility. T.D. TTB–58 did not include the names of the most common soil types in the Outer Coastal Plain AVA. The proposed expansion petition states that soils within the Outer Coastal Plain AVA generally have lower levels of clay than soils outside the AVA.

The expansion petition included soil survey maps from two sample sites within the proposed expansion area. The first sample area is located in the northwestern portion of the proposed expansion area near the proposed new boundary, and the second sample area is in the southeastern portion of the proposed expansion area near the current AVA's western boundary. The following table, compiled by TTB from data provided in the petition, lists the four most common soil types in each of the two sample areas and the percentage of the sample area covered by each soil type.

SOILS OF THE PROPOSED EXPANSION AREA

Soil type	Percentage of sample area
First Sample Area	
Freehold sandy loam	45.3
Collington sandy loam	11.9
Tinton loamy sand	9.5
Colts Neck sandy loam	6.9
Second Sample Area	
Tinton loamy sand	19.2
Collington sandy loam	16.8
Freehold sandy loam	15.9
Colts Neck sandy loam	9.3

According to the soil survey information, these four soil types all contain large amounts of sand and/or gravel, similar to the soils within the Outer Coastal Plain AVA, as described in T.D. TTB–58. Additionally, all four of these soils are moderately well-drained to well-drained, which is also a characteristic of soils of the Outer Coastal Plain AVA. Well-drained soils shed excess water quickly, reducing the risk of rot and disease in the vines.

Topography

T.D. TTB–58 states that the elevations within the Outer Coastal Plain AVA are less than 280 feet above sea level. West of the AVA are the cuestas, which separate the Outer Coastal Plain from the Inner Coastal Plain. Elevations west of this belt of cuestas are higher than those within the Outer Coastal Plain AVA. Elevations northwest of the AVA can reach as high as 1,680 feet.

The petition includes a map of elevations within and surrounding the proposed expansion area. Within both the proposed expansion area and the established AVA, elevations primarily range from 6 feet to 150 feet. The map shows a small region along the western edge of the proposed expansion area that reaches elevations of 250 feet. Similar elevations are also shown in small regions along the Outer Coastal Plain AVA's current western boundary, where the transition to the cuestas begins. The map shows that the elevations within the proposed expansion area are within the range of elevations established for the Outer Coastal Plain AVA by T.D. TTB–58. The low elevations allow marine air from the Atlantic Ocean and Delaware Bay to enter both the AVA and the proposed expansion area and moderate the temperatures.

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[3] *http://www.state.nj.us/dep/njgs/pricelst/gmseries/gms13-1.pdf.*

Climate

According to T.D. TTB–58, the maritime influence from the Atlantic Ocean and Delaware Bay makes the Outer Coastal Plain AVA generally warmer than the regions farther inland. As a result of warmer temperatures, the growing season within the AVA is also longer than in the surrounding regions and averages between 190 and 217 days.

The proposed expansion petition includes a map that shows the length of the growing season within the proposed expansion area and the surrounding regions. Within the majority of the proposed expansion area, the growing season ranges from 188 to 192 days. The same map shows that the majority of the portion of the AVA adjacent to the proposed expansion area has a growing season which is also within the range of 188 to 192 days. Immediately to the west of the proposed expansion area, outside of the Outer Coastal Plain AVA where the cuestas begin, the growing season is only between 185 and 188 days. The petition states that farther to the north and west, in the higher elevations outside both the proposed expansion area and the AVA, the growing season length drops to between 163 to 179 days. Because of the longer growing season, vineyards within the AVA and the proposed expansion area can grow varietals of grapes that require a longer time to mature.

TTB Determination

TTB concludes that the petition to expand the boundaries of the established Outer Coastal Plain AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for expansion area in the proposed regulatory text published at the end of this proposed rule.

Maps

To document the existing and proposed boundaries of the Outer Coastal Plain AVA, the petitioner provided a copy of the required maps, which are listed below in the proposed regulatory text.

Impact on Current Wine Labels

For a wine to be labeled with a viticultural area name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The approval of the proposed expansion of the Outer Coastal Plain AVA would not affect any other existing viticultural area. The expansion of the Outer Coastal Plain AVA would allow vintners to use "Outer Coastal Plain" as an appellation of origin for wines made primarily from grapes grown within the proposed expansion area if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should expand the Outer Coastal Plain AVA as proposed. TTB is specifically interested in receiving comments on the similarity of the proposed expansion area to the established Outer Coastal Plain AVA. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this notice of proposed rulemaking by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2016–0008 on "*Regulations.gov,*" the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 162 on the TTB Web site at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the "Help" tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 162 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov,* please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2016–0008 on the Federal e-rulemaking portal, *Regulations.gov,* at *http://www.regulations.gov.* A direct link to that docket is available on the TTB Web site at *https://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 162. You may also reach the relevant docket through the *Regulations.gov* search page at *http://www.regulations.gov.* For information on how to use *Regulations.gov,* click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice of proposed rulemaking, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB's information specialist at the above address or by telephone at 202–453–2265 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.207 is amended by revising paragraph (b) introductory text, adding paragraphs (b)(8) through (10), revising paragraphs (c)(16) and (17), redesignating paragraph (c)(18) through (22) as paragraphs (c)(21) through (25), and adding new paragraphs (c)(18) through (20).

The revisions and additions read as set forth below:

§ 9.207 Outer Coastal Plain.

* * * * *

(b) *Approved maps.* The appropriate maps for determining the boundary of the Outer Coastal Plain viticultural area are 10 United States Geological Survey topographic maps. They are titled:

* * * * *

(8) Freehold, New Jersey, 2014, 1:24,000 scale;

(9) Marlboro, New Jersey, 2014, 1:24,000 scale; and

(10) Keyport, New Jersey–New York, 2014, 1:24,000 scale.

(c) * * *

(16) Continue northeasterly on CR 537, crossing onto the Freehold, New Jersey, map, to the intersection of CR 537 (known locally as W. Main Street) and State Route 79 (known locally as S. Main Street) in Freehold; then

(17) Proceed northeasterly, then northerly, along State Route 79, crossing onto the Marlboro, New Jersey, map to the intersection of State Route 79 and Pleasant Valley Road in Wickatunk; then

(18) Proceed northeasterly, then southeasterly along Pleasant Valley Road to the road's intersection with Schank Road, south of Pleasant Valley; then

(19) Proceed easterly along Schank Road to the road's intersection with Holmdel Road; then

(20) Proceed northerly along Holmdel Road, crossing onto the Keyport, New Jersey–New York map, to the road's intersection with the Garden State Parkway, north of Crawford Corners; then

* * * * *

Dated: September 14, 2016.

John J. Manfreda,

Administrator.

[FR Doc. 2016–22635 Filed 9–19–16; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0495; FRL–9951–38–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan and Motor Vehicle Emissions Budgets for the Dallas/Fort Worth 2008 Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Dallas/Fort Worth (DFW) Texas Reasonable Further Progress (RFP) State Implementation Plan (SIP) for the DFW moderate nonattainment area for the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard). The SIP revision was submitted to the EPA on July 10, 2015 and supplemented on April 22, 2016. We also are proposing to approve revisions to the 2011 base year emissions inventory for the DFW moderate nonattainment area for the 2008 ozone NAAQS standard, the 2017 transportation conformity motor vehicle emissions budgets, and the required contingency measures for failure to meet RFP. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 20, 2016.

ADDRESSES: Submit your comments, identified by Docket No. [EPA–R06–OAR–2015–0495], at *http://www.regulations.gov* or via email to *jacques.wendy@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Wendy Jacques, (214) 665–7395, *jacques.wendy@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Jacques, (214) 665–7395, *jacques.wendy@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Wendy Jacques or Mr. Bill Deese at (214) 665–7253.

SUPPLEMENTARY INFORMATION:
Throughout this document, "we," "us," and "our" mean the EPA.

I. Background

The EPA is proposing to approve revisions to the Texas SIP, submitted to EPA on July 10, 2015 and supplemented on April 22, 2016 to meet certain requirements under section 182(b) of the CAA for the DFW Moderate nonattainment area (NAA) under the 2008 ozone standard. We are proposing to approve the DFW RFP SIP that includes the RFP plan, contingency measures for failure to meet RFP milestone requirements, and the 2017 transportation conformity motor vehicle emissions budgets (MVEBs). We are also proposing to approve the 2011 base year emissions inventory (EI).

On March 12, 2008, the EPA promulgated a revised 8-hour ozone standard of 0.075 parts per million (ppm)[1] and on April 30, 2012, the EPA designated and classified the DFW area (consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise counties)[2] as a Moderate NAA under the 2008 ozone standard with an attainment date of July 20, 2018.[3] Accordingly, the Texas Commission on Environmental Quality (TCEQ) was required to submit revisions to the DFW SIP to meet requirements under section 182(b) of the CAA for the Moderate NAA. A brief history of the DFW area under the prior 1-hour and 1997 8-hour ozone standards, as well as additional background information, is provided in the Technical Support Document (TSD), which is in the docket for this rulemaking.

A. The Reasonable Further Progress (RFP) Plan

The CAA requires that areas designated as nonattainment for ozone and classified as Moderate or worse demonstrate RFP in reducing emissions of ozone precursors (nitrogen oxides or NO_X and volatile organic compounds or VOCs)[4] over a specific period of time. The RFP plan generally is designed to achieve progress toward meeting the ozone NAAQS through annual reductions in emissions of NO_X and/or VOCs. In our final rule to implement the 2008 ozone standard (referred to as the SIP Requirements Rule or SRR) we addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as Moderate for the 2008 ozone standard. For the purposes of the 2008 ozone NAAQS, the EPA in the SRR interpreted CAA section 182(b)(1)(A)(ii) to require such Moderate areas to obtain 15 percent ozone precursor emission reductions over the first 6 years after the baseline year for the 2008 ozone NAAQS (see 80 FR 12264, March 6, 2015 and 40 CFR 51.1110).

RFP plans must also include a MVEB, which provides the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP. The State's RFP submittal included MVEBs for the DFW area for the year 2017 (see Chapter 5 of the State's submittal and page 13 of our TSD). The MVEBs are discussed in detail later in this rulemaking.

Pursuant to section 172(c)(9) of the CAA, nonattainment plan provisions must also provide for the implementation of contingency measures, that is, specific measures to be undertaken if a nonattainment area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the applicable attainment date. Such contingency measures shall take effect without further action by the State or EPA, which include additional controls that would be implemented if the area fails to reach, in this case, its RFP milestones. While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA has interpreted the CAA to mean that implementation of these contingency measures would provide additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the SRR (80 FR 12264, 12285). The State provided emissions reductions in excess of those needed for RFP as contingency measures (see Chapter 4, pages 15–17 of the State's submittal and Tables 6 and 7 in our TSD). The submitted contingency measures include, but are not limited to, (1) mobile source emission reductions addressing engine and fuel rules; and (2) fleet turnover.

In addition, section 182(a)(1) of the CAA requires an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Such emissions inventories are used, among other things, in the calculations concerning RFP in such areas. In the SRR, the EPA recommended using 2011 as the base year emission inventory. Texas submitted a revised 2011 base year inventory for area and mobile source emissions in the ten-county NAA to meet this requirement.

II. The EPA's Evaluation

The SIP revision submitted by the TCEQ on July 10, 2015 and supplemented on April 22, 2016 includes: (1) A revised 2011 base year EI for area and mobile sources; (2) the RFP plan (which must demonstrate NO_X and/or VOC emissions reductions of at least fifteen percent through 2017 for nine of the ten counties and VOC-only emissions reductions for Wise County); (3) contingency measures to be implemented in 2018 if the 2017 RFP target is not met; and (4) the MVEBs for 2017.[5]

We reviewed the submittal for consistency with the requirements of the CAA, EPA regulations, and EPA guidance. A summary of our analysis and findings are provided below. For a more detailed discussion of our evaluation, please see our TSD.

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[1] See 73 FR 16436, published March 27, 2008. In this action we refer to the 2008 8-hour ozone standard as "the 2008 ozone NAAQS" or "the 2008 ozone standard."

[2] See 77 FR 30088, published May 21, 2012. We refer to the DFW nonattainment area for the 2008 ozone standard as "the 10-county NAA."

[3] See 80 FR 12264, published March 6, 2015.

[4] For additional information on ozone, please see the TSD and visit *www.epa.gov/groundlevelozone.*

[5] A technical supplement to the RFP submittal was provided by the TCEQ on April 22, 2016, showing how Wise County meets the 15% emission reduction requirement described elsewhere in this proposal. The data provided in the technical supplement was included in the July 10, 2015 SIP submittal, but was not used in the State's calculations because the TCEQ calculated the 15% emission reduction using all 10 counties and did not realize the requirement for Wise County to meet a 15% emission reduction by itself. For more detail, see our TSD and the TCEQ's April 22, 2016 technical supplement in the docket for this rulemaking.

A. The DFW Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, and current inventory of actual emission from all sources. It is required by sections 172(c)(3) and 182(b)(1) of the CAA that require that nonattainment plan provisions include an inventory of NO_X and VOC emissions from all sources in the nonattainment area. The EPA previously approved the 2011 base year inventory (see 80 FR 9204, February 20, 2015). Since that submittal, several improvements have been made, including, but not limited to, improvements to the models used to calculate the mobile source categories within the inventory. Because of these refinements, revisions to more accurately reflect the EI were made by the TCEQ. We have determined that the revised inventory was developed in accordance with EPA guidance and regulations[6] and therefore, we propose to approve the revised 2011 base year EI. For reference, the previously approved base year EI (80 FR 9204) is provided in Table 1, reported in tons per day (tpd), along with the revised 2011 base year EI, also reported in tpd. Details on how each of the emissions categories was revised and emissions totals for each county are included in the TSD.

TABLE 1—PREVIOUSLY APPROVED (80 FR 9204) AND REVISED RFP BASE YEAR EIS

Source type	NO_X		VOC	
	Approved at 80 FR 9204	Submitted revisions*	Approved at 80 FR 9204	Submitted revisions*
2011 Base Year Inventory for the DFW Ten-County Nonattainment Area (tpd)				
Point	39.95	39.95	29.80	29.80
Area	42.64	50.98	292.49	291.31
Non-road Mobile	120.61	116.95	55.00	54.63
On-road Mobile	238.87	241.13	98.36	104.12
Total	442.07	449.01	475.65	479.86

*Submitted to EPA by the TCEQ on July 10, 2015.

B. The DFW RFP SIP Revision

1. The Adjusted Base Year Inventory and RFP Target Levels for 2017 and 2018

The 2011 base year EI is the starting point for calculating RFP. The "adjusted" emissions are what we would expect to see if the on-road fleet did not implement the low Reid Vapor Pressure (RVP) gasoline and pre-1990 automobile emission controls. Such controls are not creditable under section 182(b)(1)(D) of the CAA, but are no longer required to be calculated for exclusion in RFP analyses because the Administrator determined that due to the passage of time the effect of these exclusions would be de minimis (40 CFR 51.1110). The State has chosen these non-creditable reductions to represent a more accurate accounting, which is acceptable. The result, after subtracting the non-creditable reductions, is known as the adjusted base year inventory. The RFP target levels and emissions reductions required to meet those targets are calculated from the adjusted base year inventory.

To achieve the RFP target levels, section 182(c)(2)(B) of the CAA allows for substitution of NO_X emission reductions for VOC emission reductions in certain circumstances. See 80 FR 12264, 12271 and 40 CFR 51.1110.[7] For example, the DFW ten-county NAA includes nine counties that have already met the 15 percent emission reduction requirement for VOC under the 1-hour ozone NAAQS (Collin, Dallas, Denton and Tarrant, see 70 FR 18993) and under the 1997 ozone NAAQS (Ellis, Johnson, Kaufman, Parker and Rockwall, see 73 FR 58475). Therefore, these nine counties may rely upon NO_X and VOC emissions reductions to achieve the RFP target levels. Wise County however, must meet the 15 percent VOC emission reduction requirement because this is its first time to be covered under the ozone nonattainment SIP requirements. This also means that these VOC emission reductions are calculated separately from the other nine counties (see the TSD for a more detailed explanation). The RFP submittal provides emission reductions of NO_X and VOC whose combined total is 15 percent for nine of the ten counties (all but Wise County). As explained in more detail in the State's April 22, 2016 "Technical Supplement to the 2008 Ozone DFW RFP SIP Revision," the TCEQ provided a technical supplement to EPA to correct the 2017 RFP demonstration for Wise County as well as a corrected RFP spreadsheet that removed the transfer of VOC reductions to Wise County and credits emissions reductions from drilling rig controls that were available but not credited in its July 10, 2015 submittal. The technical supplement shows that Wise County meets the 15% VOC-only reduction requirement from the 2011 base year through the 2017 attainment year based solely on reductions from within Wise County. All the data used to meet this requirement within Wise County was included in the original submitted SIP RFP revision but was not used in the RFP calculations because TCEQ did not think it was needed at that time.

Tables 2 and 3 provide an accounting of the emissions targets through 2017. Table 2 shows the calculations and reductions required for nine of the ten counties (all but Wise County) to achieve RFP and Table 3 provides the calculations and reductions required for Wise County to achieve RFP.[8]

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[6] Under sections 172(c)(3) and 182(a)(1) of the CAA, states are required to submit EI information for all relevant sources for areas that are designated nonattainment for any of the NAAQS. See also *https://www.epa.gov/air-emissions-inventories* for more information on air emission inventories, including regulations and EPA guidance.

[7] See also our December 1993 NO_X Substitution Guidance at *www.epa.gov/ttn/caaa/t1/memoranda/noxsubst.pdf* and *www.epa.gov/ttn/oarpg/t1/memoranda/clarisub.pdf.*

[8] To cross-reference the calculations in these two tables, please see Tables 3, 4 and 5 in the TSD for this proposal.

TABLE 2—CALCULATION OF NO_X AND VOC REDUCTIONS FOR NINE COUNTIES (ALL BUT WISE COUNTY) THROUGH 2017

[tpd]

Description	NO_X	VOC
a. 2011 Emissions Inventory	414.52	445.79
b. Non-creditable on-road reductions 2011–2017	2.87	−4.45
c. 2017 Adjusted Base Year EI (row a minus row b)	411.65	450.24
d. Percent of NO_X and VOC to meet 15% reduction	10.0%	5.0%
e. 15% NO_X and VOC reduction, 2011–2017 [(row c) × (row d)]	41.17	22.51
f. 2017 Target Level of Emission (row c minus row e)	370.48	427.73

TABLE 3—CALCULATION OF NO_X AND VOC REDUCTIONS FOR WISE COUNTY THROUGH 2017

[tpd]

Description	NO_X	VOC
a. 2011 Emissions Inventory	34.49	34.07
b. Non-creditable on-road reductions, 2011–2017	0.21	−0.08
c. 2017 Adjusted Base Year EI (row a minus row b)	34.28	34.15
d. Percent of NO_X and VOC to meet 15% reduction	N/A	15.0%
e. 15% VOC reduction, through 2017 [(row d) × (row e)]	N/A	5.12
f. 2017 Target Level of Emissions (row c minus row e)	34.28	29.03

We find the calculations are mathematically correct and approvable.

2. The Projected Emissions Inventories and How the Required Emissions Reductions Are Achieved

Section 182(b)(1)(A) of the CAA requires that States provide sufficient control measures in their RFP plans to offset growth in emissions. To do this, the State must estimate the amount of growth that will occur between 2011 and the end of 2017. The State's approach is consistent with our guidelines in estimating the growth in emissions.[9] The projections of growth are labeled as the "Uncontrolled Emissions" for 2017 under (b) in the table below and are described in greater detail in our TSD.[10]

Texas then estimated emission reductions from State and federal control measures in place in 2011 and expected to continue through 2017. The list of State and federal control measures relied upon is provided in our TSD and includes, but is not limited to, on-road and non-road mobile source emission reductions from engine and fuel rules and fleet turnover.[11] Texas appropriately estimated the emission reductions from controls in place in 2011 and appropriately projected the emission reductions out to 2017 (see more details in the TSD) that are found on line (c) in Table 4. Texas then applied these current and future estimated reductions to the appropriate uncontrolled inventories. The results are the projected emissions listed in line "d" in Tables 4 and 5 of this proposal. The total amount of VOC and NO_X emissions in the controlled inventories for 2017 must be equal to or less than the corresponding RFP target inventories to demonstrate RFP.

TABLE 4—SUMMARY OF RFP DEMONSTRATION FOR THE DFW AREA THROUGH 2017

[tpd]

Description	NO_X	VOC	NO_X	VOC
	9 Counties		Wise County	
a. 2017 Target	370.48	427.73	34.28	29.03
b. 2017 Uncontrolled Emissions	1139.93	830.38	49.33	34.68
c. Projected Emission Reductions through 2017	839.50	428.85	20.29	5.73
d. Projected Emissions after Reductions (b–c)	300.43	401.53	29.04	28.95
2017 RFP Targets	370.48	427.73	34.28	29.03
RFP Met?	yes	yes	yes	yes
Surplus or (shortfall)	70.05	26.20	5.24	0.08

As shown in Table 4, the projected emissions in line "d" for NO_X and VOC for all counties in the DFW ten-county NAA are less than the RFP targets and therefore meet the RFP requirement (target or milestone) for 2017. Therefore, the EPA is proposing that the emissions reductions projected for 2017 are sufficient to meet the 2017 RFP targets.

3. The RFP Contingency Measures

Section 172(c)(9) of the CAA requires that an RFP plan for a Moderate nonattainment area include contingency measures, which are additional controls to be implemented if the area fails to make reasonable further progress, *i.e.*, fails to reach the 2017 RFP target. Contingency measures are intended to achieve reductions over and beyond those relied on in the RFP demonstration to achieve the 2017 milestones and could include federal and State measures already scheduled for implementation. The CAA does not preclude a State from implementing such measures before they are triggered. Texas used federal and State measures expected to be implemented to meet the contingency measure requirement for the RFP. These measures provide reductions through 2018 that are in excess of those needed to achieve the 2017 RFP milestones. Tables 5 and 6 provide an accounting of the emissions targets through 2018. Table 5 shows the calculations and reductions required to meet the contingency requirement for nine of the ten counties (all but Wise County) and Table 6 provides the calculations and reductions required for Wise County to meet the contingency requirement. Regarding the content of the contingency measures, the 3 percent emissions reductions for contingency measures may be based entirely on NO_X controls if the area has completed the initial 15 percent rate-of-progress VOC reduction required by CAA section 182(b)(1)(A)(i)[12] and the State showed that NO_X substitution would be most effective in bringing the area into attainment. The State demonstrated that the DFW rural and northwestern monitors located on the periphery of the DFW area have continued to measure NO_X-limited conditions, meaning that ozone formation is more sensitive to the amount of NO_X present in the atmosphere. The State also shows that the DFW monitors in the urban core measure more transitional conditions (not strongly limited by either NO_X or VOC) and controlling either VOC or NO_X emissions in these regions would reduce ozone concentrations.[13] For the RFP contingency measures, the State chose a mix of NO_X and VOC emission reductions for all but Wise County and chose just NO_X emission reductions for Wise County. The State chose to separately account for contingency measures for Wise County and to be consistent, we have done the same.

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[9] Our EI guidance documents are posted at *https://www.epa.gov/air-emissions-inventories/emissions-inventory-guidance-documents.*

[10] See also Tables 8 and 9 in the TSD for this proposal.

[11] See Tables 6 and 7 in the TSD for this proposal.

TABLE 5—DEMONSTRATION OF 2018 CONTINGENCY MEASURES (TPD) FOR NINE COUNTIES

[All but Wise County]

Description	NO_X	VOC
A. 2017 Adjusted Base Year EI	411.65	450.24
B. Percent of NO_X and VOC to meet 3% contingency	2%	1%
C. Required reduction to provide contingency (A × B)	8.23	4.50
D. Reduction to meet RFP in 2017 (Table 2, line e)	41.17	22.51
E. 2018 on-road mobile non-creditable reductions	0.58	0.23
F. 2018 Target Level of Emissions (line A–C–D–E)	361.67	423.00
Excess reductions to meet contingency requirement		
G. 2018 Uncontrolled Emissions	1157.47	833.75
H. Total Reductions Projected through 2018	878.29	445.64
J. Projected emissions after reductions (line G minus line H)	279.18	388.11
Add line C	8.23	4.50
K. Projected emissions, accounting for contingency measures	287.41	392.61
Total surplus or shortfall		
Line K is less than line F. Subtract line K from line F for surplus	74.26	30.39
Is the contingency measure requirement met?	Yes	Yes

TABLE 6—DEMONSTRATION OF 2018 CONTINGENCY MEASURES FOR WISE COUNTY

[tpd]

Description	NO_X	VOC
A. 2017 Adjusted Base Year EI	34.28	34.15
B. Percent of NO_X and VOC to meet 3% contingency	3%	
C. Required reduction to provide contingency (A × B)	1.03	
D. Reduction to meet RFP in 2017	0	5.12
E. 2018 on-road mobile non-creditable reductions	0	0
F. 2018 Target Level of Emissions (line A–C–D–E)	33.25	29.03
Excess reductions to meet contingency requirement		
G. 2018 Uncontrolled Emissions	46.24	29.71
H. Total Reductions Projected through 2018	20.95	5.97
J. Projected emissions after reductions (line G minus line H)	25.29	23.74
Add line C	1.03	0
K. Projected emissions, accounting for contingency measures	26.32	23.74
Total surplus or shortfall		
Line K is less than line F. Subtract line K from line F for surplus	6.93	5.29
Is the contingency measure requirement met?	Yes	

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[12] See 80 FR 12264, 12285.

[13] The TCEQ established long ago that DFW area ozone levels are sensitive to NO_X emissions and we are aware of the transition in the urban core. See Appendix D (the conceptual model) for the State's Attainment Demonstration for the DFW area under the 2008 ozone standard, which is posted on the TCEQ Web site at *https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone*.

As shown in Tables 5 and 6, the NO_X and VOC emission reductions through 2018 are sufficient to provide at least 3 percent emission reductions and thus we find that the contingency measures requirement are met for RFP.

4. The Motor Vehicle Emissions Budgets (MVEBs)

According to the transportation conformity rule, an RFP plan must establish MVEBs for transportation conformity purposes. See 40 CFR 93.118(b)(1)(i). The MVEB is the mechanism to ensure that future transportation activities will not produce new air quality violations, worsen existing violations, delay reaching RFP milestones, or delay timely attainment of the NAAQS. A MVEB establishes the maximum amount of emissions allowed in the SIP for on-road motor vehicles.

As part of the July 10, 2015, SIP revision submittal, the TCEQ included VOC and NO_X MVEBs for 2017; these budgets are provided in Table 7. For the budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). The availability of these budgets was posted on our Web site on August 25, 2015, for the purpose of soliciting public comments on their adequacy. The comment period closed on September 24, 2015, and we received no comments. On January 11, 2016, we published the Notice of Adequacy Determination for these MVEBs (81 FR 1184). As a result of such adequacy determination, these MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEBs. Today we are proposing that these MVEBs are fully consistent with RFP, as it sets the allowable on-road mobile emissions the DFW area can produce and continue to demonstrate RFP.

TABLE 7—RFP MOTOR VEHICLE EMISSIONS BUDGETS FOR DFW (tpd)

Year	NO_X	VOC
2017	148.36	77.18

III. Proposed Action

The EPA is proposing to approve revisions to the Texas SIP to meet certain requirements under section 182(b) of the CAA for the DFW Moderate nonattainment area under the 2008 ozone standard that were submitted to EPA on July 10, 2015 and supplemented on April 22, 2016. We are proposing to approve the revised base year emission inventory, the RFP plan, the 2017 MVEBs; and RFP contingency measures.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 14, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–22564 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0812; FRL–9951–36–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Infrastructure for the Lead, Ozone, Nitrogen Dioxide and Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) submissions from the State of Oklahoma regarding the 2008 Lead (Pb), 2008 Ozone, 2010 Nitrogen Dioxide (NO_2), and 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS or standards). The four submittals address how the existing SIP provides for implementation, maintenance, and enforcement of these four NAAQS (infrastructure SIP or i-SIP). These i-SIPs ensure that the Oklahoma SIP is adequate to meet the State's responsibilities under the Act, including the CAA requirements for interstate transport of Pb and NO_2 emissions.

DATES: Written comments must be received on or before October 20, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0812, at *http://*

www.regulations.gov or via email to *paige.carrie@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Carrie Paige, (214) 665–6521, *paige.carrie@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The docket index and publicly available docket materials for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Carrie Paige, 214–665–6521, *paige.carrie@epa.gov.* To inspect the hard copy materials, please schedule an appointment with her or Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: In this document "we," "us," and "our" means the EPA.

I. Background

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of such new or revised NAAQS. Section 110(a)(2) lists specific requirements that SIPs must include to adequately address such new or revised NAAQS, as applicable.[1]

On March 27, 2008, following a periodic review of the NAAQS for ozone, EPA revised the primary and secondary 8-hour NAAQS for ozone: the level of the primary and secondary standards was revised to 0.075 parts per million (ppm), expressed to three decimal places, based on a 3-year average of the fourth-highest maximum 8-hour average concentration (see 73 FR 16436).[2] Likewise, on November 12, 2008, we revised the primary and secondary NAAQS for Pb to 0.15 micrograms per cubic meter (see 73 FR 66964). Similarly, on February 9, 2010, EPA revised the primary NAAQS for NO_2 to establish a new 1-hour standard at a level of 100 parts per billion (ppb), based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard (see 75 FR 6474).[3] Also, on June 22, 2010, we revised the primary NAAQS for SO_2 to establish a new 1-hour standard at a level of 75 ppb, based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (see 75 FR 35520.) We refer to each of these NAAQS by the year promulgated, *e.g.,* "the 2008 ozone standard." For more information on these standards, please visit *https://www.epa.gov/criteria-air-pollutants.*

Our technical evaluation of the Oklahoma submittals is provided in the Technical Support Document (TSD), which is in the docket for this rulemaking.[4] With the exception of three sub-elements (or "prongs") that pertain to interstate transport and visibility protection, EPA is proposing to approve the Oklahoma i-SIP submittals for the 2008 Pb and ozone NAAQS, as well as the 2010 NO_2 and SO_2 NAAQS as meeting the requirements of an i-SIP. The exceptions are: Section 110(a)(2)(D)(i)(I), prongs 1 and 2, which address the contribution to nonattainment and interfere with maintenance of the 2008 ozone and 2010 SO_2 NAAQS in other states; and section 110(a)(2)(D)(i)(II)—the prong that specifically addresses visibility protection for the 2010 SO_2 NAAQS. We will take separate action on these three prongs for the 2008 ozone and 2010 SO_2 NAAQS submittals.

II. EPA's Evaluation of the Oklahoma i-SIP and Interstate Transport Submittals

The State's submittals on October 5, 2012; February 28, 2014; and January 28, 2015 demonstrate how the existing Oklahoma SIP meets the infrastructure requirements for the 2008 Pb and ozone NAAQS and the 2010 NO_2 and SO_2 NAAQS. A summary of our evaluation of the Oklahoma SIP for each applicable element of CAA section 110(a)(2)(A)-(M) follows. These SIP submissions became complete by operation of law on April 5, 2013, August 28, 2014, and July 18, 2015, respectively, pursuant to CAA section 110(k)(1)(B).

(A) Emission limits and other control measures: CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act, and other related matters as needed to implement, maintain and enforce each of the NAAQS.[5] The Oklahoma Clean Air Act (OCAA) provides the Oklahoma Department of Environmental Quality (ODEQ) with broad legal authority, to establish and implement air quality programs and enforce regulations it has promulgated. The ODEQ has authority to adopt emission standards and compliance schedules applicable to regulated entities; other measures necessary for attainment and maintenance of the NAAQS; enforce applicable laws, regulations, standards

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[1] *See* EPA guidance documents: *http://www3.epa.gov/airquality/lead/pdfs/20111014infrastructure.pdf* and *http://epa.gov/air/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.*

[2] On October 1, 2015, EPA strengthened the primary and secondary ozone standards to 70 parts per billion (80 FR 65292, October 26, 2015). The submittals under evaluation in this proposal do not address such standards. For more information on the 2015 ozone standards, please visit our Web site: *https://www.epa.gov/ozone-pollution/2015-national-ambient-air-quality-standards-naaqs-ozone.*

[3] EPA also established requirements for the NO_2 monitoring network that includes monitors at locations where maximum NO_2 concentrations are expected to occur, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide NO_2 concentrations that occur more broadly across communities.

[4] Additional information on: EPA's approach for reviewing i-SIPs; the details of the SIP submittal and EPA's evaluation; the effect of recent court decisions on i-SIPs; the statute and regulatory citations in the Oklahoma SIP specific to this review; the specific applicable CAA and EPA regulatory citations; **Federal Register** citations for Oklahoma SIP approvals; Oklahoma minor New Source Review program and EPA approval activities; and Oklahoma Prevention of Significant Deterioration (PSD) program can be found in the TSD.

[5] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an i-SIP, we are not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the Oklahoma SIP has basic structural provisions for the implementation of the NAAQS.

and compliance schedules; and seek injunctive relief. The approved SIP for Oklahoma is documented at 40 CFR part 52.1920, Subpart LL. Most of the State's air quality rules and standards are codified at Title 252, Chapter 100 of the Oklahoma Administrative Code (denoted OAC 252:100). A detailed list of the applicable rules at OAC 252:100 and elsewhere in the OAC, along with the citations for approval into the SIP, is provided in Table 1 of the TSD.

(B) Ambient air quality monitoring/data system: CAA section 110(a)(2)(B) requires SIPs to provide for establishment and implementation of ambient air quality monitors, collection and analysis of monitoring data, and providing such data to EPA upon request. The OCAA provides the authority allowing the ODEQ to collect air monitoring data, quality-assure the results, and report the data. The ODEQ maintains and operates a monitoring network to measure ambient levels of the pollutants in accordance with EPA regulations which specify siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to EPA quality assurance requirements. The ODEQ submits all required data to EPA, following EPA regulations. The monitoring network was approved into the SIP and undergoes annual review by EPA.[6] In addition, 40 CFR 58.10(d) requires that state assess their monitoring network every five years. The ODEQ submitted their 5-year monitoring network assessments to us on April 11, 2016. Our comments on the 5-year assessment, dated July 22, 2016, are in the docket for this rulemaking.[7] The ODEQ Web site identifies Oklahoma's ambient monitor locations, and provides past and current concentrations of criteria pollutants measured by the State's monitors.[8]

(C) Program for enforcement: CAA section 110(a)(2)(C) requires SIPs to include the following three elements: (1) A program providing for enforcement of the measures in paragraph *A* above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.,* state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).[9]

(1) Enforcement of SIP Measures. As noted earlier in section 110(a)(2)(A), the ODEQ and its Executive Director have the authority to enforce the requirements of the OCAA and any regulations, permits, or final compliance orders. This statute also provides the ODEQ and its Executive Director with general enforcement powers. Among other things, they can investigate regulated entities; issue field citations and compliance orders; file lawsuits to compel compliance with the statutes and regulations; commence civil actions; pursue criminal prosecutions; collect criminal and civil penalties; enter into remediation agreements; and issue emergency orders to cease operations. The OCAA also provides additional enforcement authorities and funding mechanisms.

(2) Minor New Source Review (NSR). The CAA requires the SIP to include measures to regulate construction and modification of stationary sources to protect the NAAQS. The Oklahoma minor NSR permitting requirements have been approved in the SIP.[10]

(3) Prevention of Significant Deterioration (PSD) permit program. Oklahoma's PSD program covers all NSR regulated pollutants, as well as the NAAQS subject to our review contained herein, and has been approved by EPA into the SIP.[11]

(D)(i) Interstate Pollution Transport: There are four requirements the SIP must include relating to interstate transport. The SIP must prohibit emissions within Oklahoma from contributing significantly to the nonattainment of the NAAQS in other states, and from interfering with the maintenance of the NAAQS in other states (section 110(a)(2)(D)(i)(I)). The SIP must also prohibit emissions within Oklahoma both from interfering with measures required to prevent significant deterioration in other states and from interfering with measures required to protect visibility in other states (section 110(a)(2)(D)(i)(II)).

Lead: We propose to approve the portion of the submittal that addresses the requirement that emissions within Oklahoma are prohibited from contributing to nonattainment of the Pb NAAQS in other states, and from interfering with maintenance of the Pb NAAQS in other states. The physical properties of Pb, which is a basic metal element and very dense, prevent Pb emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form Pb or Pb compounds in the ambient air, thus, ambient concentrations of Pb are typically highest near Pb sources. There are no areas within the State of Oklahoma designated as nonattainment with respect to the 2008 lead NAAQS. The ODEQ 2016 ambient monitoring plan provided information on lead sources: there are two significant sources of Pb emissions within the state that emit Pb in amounts equal to or exceeding 0.5 tons per year and no sources within two miles of a neighboring state line.[12]

We are also proposing to approve the portion pertaining to the prevention of significant deterioration in other states for lead, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants, (including greenhouse gas or GHG), which prevents significant deterioration in nearby States. In addition, as described earlier in this section, significant impacts from Pb emissions from stationary sources are limited to short distances from such sources, so visibility is not effected by lead emissions. Thus, we propose to approve the portion of the Oklahoma SIP related to the protection of visibility in other states for the Pb NAAQS.

Nitrogen Dioxide: We propose to approve the portion of the submittal which addresses the prevention of emissions which significantly contribute to the nonattainment of the NO_2 NAAQS in other states and interfere with the maintenance of the NO_2 NAAQS in other states. On February 17, 2012, EPA designated the entire country as "unclassifiable/attainment" for the 2010 NO_2 NAAQS.[13] As listed in our NO_2 Design Values report, only one maintenance area exists for the prior annual NO_2 NAAQS (Los

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[6] A copy of the 2016 Annual Air Monitoring Network Plan and EPA's approval letter are included in the docket for this proposed rulemaking.

[7] A copy of the ODEQ's 5-year monitoring network assessment and EPA's evaluation are included in the docket for this proposed rulemaking.

[8] *see http://www.ODEQ.Oklahoma.gov/airquality/monops/sites/mon_sites.html* and *http://www17.ODEQ.Oklahoma.gov/tamis/index.cfm?fuseaction=home.welcome.*

[9] *See* TSD, beginning on page 6.

[10] EPA is not proposing to approve or disapprove the existing Oklahoma minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (*e.g.,* 76 FR 41076–41079). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs. Citations for the Oklahoma NSR program are provided in our TSD for this action.

[11] See 79 FR 66626, November 10, 2014 and the TSD for further discussion.

[12] Both sources are located in the Tulsa area; see the FY2016 Oklahoma annual network monitoring plan in the docket for this rulemaking.

[13] 77 FR 9532, February 17, 2012.

Angeles, California).[14] With no nonattainment or maintenance areas in surrounding states, Oklahoma does not significantly contribute to nonattainment or maintenance of these NAAQS in any of the contiguous states. Furthermore, during the three most recent design value periods (2011 through 2013, 2012 through 2014, and 2013 through 2015) we found no monitors violating the 2010 NO_2 NAAQS in the US.

We are also proposing to approve the portion of the submittal related to the prevention of significant deterioration in other states, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants, including GHG, which prevents significant deterioration in nearby states. In addition, on December 28, 2011 we finalized a FIP that in combination with the controls required by the portion of the Oklahoma Regional Haze (RH) submittal approved in the same rulemaking, would serve to prevent sources in Oklahoma from emitting pollutants in amounts that would interfere with efforts to protect visibility in other states (see 76 FR 81728). On March 7, 2014, we withdrew the FIP and finalized our approval of the revised Oklahoma RH plan and interstate transport affecting visibility. Thus, the Oklahoma SIP includes provisions that satisfy the CAA interstate pollution abatement requirements of section 110(a)(2)(D)(i)(II) for the 2010 NO_2 NAAQS.

Ozone: At this time we are not taking action on the infrastructure submittal regarding the prevention of emissions which significantly contribute to nonattainment of the ozone NAAQS in other states, and interference with the maintenance of the ozone NAAQS in other states. We plan to act on this sub-element in a separate action.

We are proposing to approve the portion of the submittal addressing the prevention of significant deterioration in other states, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants (including GHG), which prevents significant deterioration in nearby states. In addition and as discussed earlier in this rulemaking, on March 7, 2014, we finalized our determination that Oklahoma's Regional Haze Implementation Plan Revision meets the CAA provisions concerning non-interference with programs to protect visibility in other states, consistent with section 110(a)(2)(D)(i)(II) of the CAA (see 79 FR 12944). Thus, the Oklahoma SIP includes provisions that satisfy the CAA interstate pollution abatement requirements of section 110(a)(2)(D)(i)(II) for the 2008 ozone NAAQS.

Sulfur Dioxide: At this time we are not taking action on the infrastructure submittal regarding the prevention of emissions which significantly contribute to nonattainment of the SO_2 NAAQS in other states, and interference with the maintenance of the SO_2 NAAQS in other states (prongs 1 and 2). We are also not taking action on the portion of the submittal addressing visibility protection (prong 4). We plan to act on these three sub-elements in a separate action.

We are proposing to approve only the sub-element addressing the prevention of significant deterioration in other states, as Oklahoma has an approved PSD program. The program regulates all NSR pollutants (including GHG), which prevents significant deterioration in nearby states.

(D)(ii)Interstate Pollution Abatement and International Air Pollution: Pursuant to section 110(a)(2)(D)(ii)), states must comply with the requirements listed in sections 115 and 126 of the CAA which were designed to aid in the abatement of interstate and international pollution. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. Oklahoma's PSD program contains the element pertaining to notification of neighboring states of the issuance of PSD permits. Section 115 relates to international pollution abatement. There are no findings by EPA that air emissions originating in Oklahoma affect other countries. Thus, the Oklahoma SIP satisfies the requirements of section 110(a)(2)(D)(ii) for the four NAAQS discussed herein.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) compliance with requirements relating to state boards as explained in section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Sections 110(a)(2)(A) and (C), discussed earlier in this rulemaking, also require that the state have adequate authority to implement and enforce the SIP without legal impediments. The State's submittals describe the Oklahoma statutes and SIP regulations governing the various functions of personnel within the ODEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program. See the TSD for further detail.

With respect to funding, the OCAA and the SIP provide the ODEQ with authority to hire and compensate employees; accept and administer grants or other funds; require the ODEQ to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the ODEQ to collect additional fees necessary to cover reasonable costs associated with processing air permit applications. The EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP.

As required by the CAA, the Oklahoma statutes and the SIP stipulate that any board or body that approves permits or enforcement orders must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders; and the members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

Oklahoma has not delegated authority to implement any of the provisions of its plan to local governmental entities—the ODEQ acts as the primary air pollution control agency.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

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[14] See *https://www.epa.gov/air-trends/air-quality-design-values#Design Value Reports* and the docket for this rulemaking.

The OCAA and SIP require stationary sources to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved State regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions.[15] The ODEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

(G) Emergency authority: The SIP must provide the ODEQ with authority to restrain any source from causing imminent and substantial endangerment to public health or welfare or the environment. The SIP must include an adequate contingency plan to implement the ODEQ's emergency authority.

The OCAA provides the ODEQ with authority to address environmental emergencies. The ODEQ has an "Emergency Episode Plan," which includes contingency measures and these provisions are in the SIP (see 56 FR 5656, February 12, 1991). The ODEQ has general emergency powers to address any possible dangerous air pollution episode if necessary to protect the environment and public health.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS. The OCAA authorizes the ODEQ to revise the Oklahoma SIP as necessary, to account for revisions to an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

(I) Nonattainment areas: Section 110(a)(2)(I) of the Act requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. There are no areas designated as nonattainment in Oklahoma. In addition, as noted earlier, EPA believes that nonattainment area requirements should be treated separately from the infrastructure SIP requirements. The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on any part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation; (2) section 127 relating to public notification of NAAQS exceedances and related issues; and, (3) prevention of significant deterioration of air quality and visibility protection.

(1) *Interagency consultation:* As required by the OCAA and the Oklahoma SIP, there must be a public hearing before the adoption of any regulations or emission control requirements, and all interested persons must be given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, and to examine the testimony of witnesses from the hearing. In addition, the OCAA provides the ODEQ the power and duty to advise, consult and cooperate with other agencies of the State, towns, cities, counties, industries, other states, and the federal government regarding the prevention and control of new and existing air contamination sources in the State. Furthermore, the Oklahoma PSD SIP rules mandate that the ODEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Managers (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD SIP rules require the ODEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program, and the State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FLMs of any advance notification or early consultation with a major new or modifying source prior to the submission of a permit application.

(2) *Public Notification:* The ODEQ regularly notifies the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for ODEQ to advise the public of the health hazard associated with such exceedances, enhance public awareness of measures that can prevent such exceedances, and inform the public on how it can participate in regulatory and other efforts to improve air quality. In addition, as described in the discussion of section 110(a)(2)(B) earlier in this rulemaking, the ODEQ air monitoring Web site provides quality data for each of the monitoring stations in Oklahoma; this data is provided instantaneously for certain pollutants, such as ozone. The Web site also provides information on the health effects of all six criteria pollutants.

(3) *PSD and Visibility Protection:* The PSD requirements for this element are the same as those addressed under 110(a)(2)(C) earlier in this rulemaking—the State has a SIP-approved PSD program, so this requirement has been met. The Oklahoma SIP requirements relating to visibility and regional haze are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the Pb and ozone NAAQS in 2008, and the NO_2 and SO_2 NAAQS in 2010, and consequently there are no newly applicable visibility protection obligations here.

(K) Air quality and modeling/data: The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The ODEQ has the authority and duty under the OCAA to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, the ODEQ has the ability to perform modeling for the NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and EPA guidance. Furthermore, the OCAA empowers the ODEQ to cooperate with the federal government and others concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

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[15] A list of such rules and SIP approval dates are provided in Table 4 of the TSD.

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority as a condition of any permit required under the CAA. The fees cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until such a time when a fee program is established by the state pursuant to Title V of the CAA, and is submitted to and is approved by EPA. The State has met this requirement as it has a fully developed fee system in place and approved in the SIP. See also the discussion of section 110(a)(2)(E) earlier in this rulemaking action.

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the discussion of section 110(a)(2)(J)(1) and (2) earlier in this rulemaking for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP public participation requirements. Additionally, the OCAA requires cooperative action between itself and other agencies of the State, towns, cities, counties, industry, other states, affected groups, and the federal government in the prevention and control of air pollution.

III. Proposed Action

EPA is proposing to approve in part the October 5, 2012, February 28, 2014 and January 28, 2015, infrastructure SIP submissions from Oklahoma, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Table 1 outlines the specific actions we are proposing to take.

TABLE 1—PROPOSED ACTION ON OKLAHOMA INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS

110(a)(2) Element	2008 ozone	2008 Pb	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	PR	PR	PR	PR
(B): Ambient air quality monitoring and data system	PR	PR	PR	PR
(C)(i): Enforcement of SIP measures	PR	PR	PR	PR
(C)(ii): PSD program for major sources and major modifications	PR	PR	PR	PR
(C)(iii): Permitting program for minor sources and minor modifications	PR	PR	PR	PR
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (requirements 1 and 2)	SA	PR	PR	SA
(D)(i)(II): PSD (requirement 3)	PR	PR	PR	PR
(D)(i)(II): Visibility Protection (requirement 4)	PR	PR	PR	SA
(D)(ii): Interstate and International Pollution Abatement	PR	PR	PR	PR
(E)(i): Adequate resources	PR	PR	PR	PR
(E)(ii): State boards	PR	PR	PR	PR
(E)(iii): Necessary assurances with respect to local agencies	PR	PR	PR	PR
(F): Stationary source monitoring system	PR	PR	PR	PR
(G): Emergency power	PR	PR	PR	PR
(H): Future SIP revisions	PR	PR	PR	PR
(I): Nonattainment area plan or plan revisions under part D	NG	NG	NG	NG
(J)(i): Consultation with government officials	PR	PR	PR	PR
(J)(ii): Public notification	PR	PR	PR	PR
(J)(iii): PSD	PR	PR	PR	PR
(J)(iv): Visibility protection	PR	PR	PR	PR
(K): Air quality modeling and data	PR	PR	PR	PR
(L): Permitting fees	PR	PR	PR	PR
(M): Consultation and participation by affected local entities	PR	PR	PR	PR

Key to Table 1:
NG—Element is not germane to infrastructure SIPs.
PR—Proposing to approve in this action.
SA—Acting on this infrastructure requirement in a separate rulemaking.

Based upon review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the Oklahoma SIP, we believe Oklahoma has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) (except as noted in Table 1) to ensure that the 2008 Pb, 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS are implemented in the State.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 13, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–22560 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 455

Office of Inspector General

42 CFR Part 1007

RIN 0936–AA07

Medicaid; Revisions to State Medicaid Fraud Control Unit Rules

AGENCIES: Office of Inspector General (OIG) and Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation governing State Medicaid Fraud Control Units (MFCUs or Units). The proposed rule would incorporate statutory changes affecting the MFCUs as well as policy and practice changes that have occurred since the regulation was initially issued in 1978. These changes include a codification of OIG's delegated authority, MFCU authority, functions, and responsibilities; disallowances; and issues related to organization, prosecutorial authority, staffing, recertification, and the MFCUs' relationship with Medicaid agencies.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. Eastern Standard Time on November 21, 2016.

ADDRESSES: In commenting, please reference file code OIG–406–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. However, you may submit comments using one of two ways (no duplicates, please):

1. *Electronically.* We strongly encourage you to submit your comments via the Internet. You may submit electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* Because of potential delays in our receipt and processing of mail, we encourage respondents to submit comments electronically to ensure timely receipt. However, you may mail your printed or written submissions to the following address:

Patrice Drew, Office of Inspector General, Department of Health and Human Services, Attention: OIG–406–P, Cohen Building, 330 Independence Avenue SW, Room 5269, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period. Comments received after the end of the comment period may not be considered.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201, Monday through Friday from 10 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

FOR FURTHER INFORMATION CONTACT: Susan Burbach, (202) 708–9789 or Richard Stern, (202) 205–0572, Office of Inspector General, for questions relating to the proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for Regulatory Action

We propose to amend this regulation for two reasons. First, we want to incorporate into the rule the statutory changes that have occurred since the 1977 enactment of the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95–142), which amended section 1903(a) of the Social Security Act (the Act) to provide for Federal participation in the costs attributable to establishing and operating a State Medicaid Fraud Control Unit (MFCU or Unit). Second, we want to align the rule with practices and policies that have developed and evolved since the initial version of the rule was issued in 1978, 43 FR 32078 (July 24, 1978), codified at 42 CFR part 1007. Because of the extensive nature of our proposal, we have republished the entirety of part 1007 and incorporated our proposed changes as part of that publication. However, for some sections within part 1007, we are not proposing substantive changes.

B. Legal Authority

The legal authority for this regulatory action is found in the Act as follows: 1007: SSA §§ 1902(a)(61), 1903(a)(6), 1903(b)(3), 1903(q), and 1102. 455: SSA §§ 1902(a)(4), 1903(i)(2), 1909.

C. Summary of Major Provisions

(1) *Statutory Changes.* We propose to incorporate statutory changes that have occurred since 1977, including (1)

raising the Federal matching rate for ongoing operating costs from 50 percent to 75 percent, (2) establishing a Medicaid State plan requirement that a State must operate an effective MFCU, (3) establishing standards under which Units must be operated, (4) allowing MFCUs to seek approval from the relevant Inspector General to investigate and prosecute violations of State law related to fraud in any aspect of the provision of health care services and activities of providers of such services under any Federal health care program, including Medicare, as long as the fraud is primarily related to Medicaid, and (5) giving MFCUs the option to investigate and prosecute patient abuse or neglect in board and care facilities, regardless of whether the facilities receive Medicaid payments.

(2) *Office of Inspector General Authority.* We propose to amend the regulation to codify that the authority for certification and recertification of the MFCUs as well as the administration of the grant award was transferred from the predecessor agency of CMS (Health Care Financing Administration) to OIG on July 27, 1979. 44 FR 47811 (August 15, 1979).

(3) *Unit Authority.* We propose to add definitions to clarify key issues related to Unit authority under the grant to conduct fraud investigations as well as patient abuse and neglect and misappropriation of patient funds investigations. Specifically, we propose to add definitions for fraud, abuse of patients, board and care facility, health care facility, misappropriation of patient funds, neglect of patients, and program abuse. We also propose to modify the definition of provider.

(4) *Organizational Requirements.* We propose to clarify what it means to be considered a single identifiable entity of State government.

(5) *Prosecutorial Authority Requirements.* We propose to make technical amendments to the prosecutorial authority requirement options to include the prosecution of patient abuse and neglect and to include referrals to other offices with statewide prosecutorial authority, in addition to the State Attorney General.

(6) *Agreement with Medicaid agency.* We propose that the agreement with the Medicaid agency must include establishing regular communication, procedures for coordination, including those involving payment suspension and acceptance or declination of cases. We also propose that the parties review and, if needed, update the agreement no less frequently than every 5 years.

(7) *Functions and Responsibilities.* In addition to the proposed statutory amendments that expand the Units' functions and responsibilities, we propose to require that Units submit all convictions to OIG for purposes of program exclusion within 30 days of sentencing or as soon as practicable if a Unit encounters delays from the courts. We propose to further clarify the requirement that a Unit make information available to, and coordinate with, OIG investigators and attorneys, other Federal investigators, and Federal prosecutors on Medicaid fraud information and investigations involving the same suspects or allegations.

(8) *Staffing Requirements.* We propose to clarify that Units may choose to employ professional employees as full- or part-time employees so long as they devote their "exclusive effort" to MFCU functions. We also propose that a Unit must employ a director and that all MFCU employees must be under the direction and supervision of the Unit director. We propose that MFCU professional employees may also obtain outside employment with some restriction and may perform temporary assignments that are not a required function of the Unit so long as the grant is not charged for those duties. We also propose to clarify that Units may employ employees or consultants with specialized knowledge and skills, as well as administrative and support staff, on a full- or part-time basis. We further propose to clarify that investigation and prosecution functions may not be outsourced through consultant agreements or other contracts. We propose to require that Units provide training for professional employees on Medicaid fraud and patient abuse and neglect matters. Finally, we propose to add definitions for full- and part-time employee, professional employee, director, and exclusive effort.

(9) *Recertification Requirements.* We propose to amend the regulation to reflect the Unit recertification process. This includes describing what is required annually by OIG as part of recertification, including submission of a reapplication, including certain requested information, as well as a statistical report. We also propose to modify the annual report requirements. We also propose to clarify the factors, such as performance standards, that OIG considers when recertifying a MFCU. We also propose to notify the Unit of approval or denial of recertification and to create procedures for reconsideration should OIG deny recertification.

(10) *Federal Financial Participation (FFP).* We propose to clarify that, except for Units with OIG approval to conduct data mining under this part, the prohibition of FFP for data mining activities extends only to the cost of activities that duplicate surveillance and utilization review responsibilities of State Medicaid agencies. We also propose to clarify that efforts to increase referrals through program outreach activities are eligible for FFP.

(11) *Disallowance Procedures.* We propose to amend the regulations to set forth procedures for OIG disallowances of FFP and for Unit requests for reconsideration and appeal of disallowances.

(12) *CMS Companion Regulation.* To ensure that both the MFCU and the State Medicaid agency are required to have an agreement with each other, we are including amendments to the CMS regulation at 42 CFR 455.21 of this section to require that the State Medicaid agency have an agreement with the MFCU. The regulations at 42 CFR 455.21 are enforced by CMS. However, we are including amendments to part 455 here to ensure a comprehensive regulatory package that sets forth in one location the Department's regulations related to MFCUs.

D. Costs and Benefits

There are no significant costs associated with the proposed regulatory revisions that would impose any mandates on State, local, or tribal governments or on the private sector.

I. Background

A. Statutory Changes Since 1977 Implemented by this Rulemaking

(1) *Omnibus Reconciliation Act of 1980 (Pub. L. 96–499).* In order to provide a continuing incentive for operation of State MFCUs, the Omnibus Reconciliation Act (OBRA) of 1980, amended section 1903(a)(6) of the Act and raised the Federal matching rate for ongoing operating costs (*i.e.*, for all years after the initial 3 years of operations) from 50 percent to 75 percent.

(2) *Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).* The Omnibus Budget Reconciliation Act of 1993 added § 1902(a)(61) to the Act, establishing a Medicaid State plan requirement that a State must operate an effective MFCU, unless the State demonstrates that effective operation of a Unit would not be cost effective and that, in the absence of a Unit, beneficiaries will be protected from abuse and neglect. The statute further requires that the Units be operated in accordance with standards established by the Secretary.

(3) *Ticket to Work and Work Incentives Improvement Act of 1999*

(Pub. L. 106–170). In the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), Congress amended section 1903(q) of the Act to extend the authority of MFCUs in two ways. First, the Units may now seek approval from the relevant Inspector General (in most circumstances the Inspector General of the Department of Health and Human Services (HHS) to investigate and prosecute violations of State law related to any aspect of fraud in connection with "the provision of health care services and activities of providers of such services under any Federal health care program," including Medicare, "if the suspected fraud or violation of State law is primarily related to" Medicaid. Second, the law gives Units the option to investigate and prosecute patient abuse or neglect in board and care facilities, regardless of whether those facilities receive Medicaid payments.

B. Regulatory, Practice, and Policy Changes to the MFCU Program Since 1978

The regulation has been amended on two occasions. First, the regulation was amended at § 1007.9(e)–(g) to implement payment suspension provisions found in the Affordable Care Act (76 FR 5970 (February 2, 2011)). Second, the regulation was modified at § 1007.20 to allow FFP for data mining under certain circumstances (78 FR 29055 (May 17, 2013)). With the exception of these two revisions, the regulation has not received a wholesale revision since it was originally published in 1978. In the ensuing years, growth of the MFCU program to 50 Units (49 States and the District of Columbia) as well as changes in MFCU practice, health care, and the workplace have led to the need for many amendments to the regulation. Further, in 1994, pursuant to section 1902(a)(61) of the Act, OIG, in consultation with the MFCUs, developed 12 performance standards to be used in assessing the operations of MFCUs. These performance standards have since been revised and republished at 77 FR 32645 (June 1, 2012). OIG uses the performance standards in annually recertifying each Unit and in determining if a Unit is effectively and efficiently carrying out its duties and responsibilities.

I. Provisions of the Proposed Rule

Subpart A—General Provisions and Definitions

We propose to add a new subpart A of this part entitled "General Provisions and Definitions" which includes § 1007.1, "Definitions," and § 1007.3, "What is the statutory basis and organization of this rule?"

1007.1 Definitions

Current § 1007.1 defines four terms: "data mining," "employ or employee," "provider," and "Unit." We propose to modify the current definition of "provider," eliminate the definition of "employ or employee," and add definitions for "full-time employee," "part-time employee," "professional employee" and "exclusive effort." We propose to add a definition of the term "director." We also propose to add several additional terms to clarify the scope of the Units' duties and responsibilities: "fraud," "abuse of patients," "board and care facility," "health care facility," "misappropriation of patient funds," "neglect of patients," and "program abuse."

1. Full-Time Employee, Part-Time Employee, and Exclusive Effort

Existing regulations at § 1007.19 preclude FFP in expenditures for any management function for the Unit, any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution that is not performed by a "full time employee of the Unit." As a matter of policy and practice, OIG has permitted professional employees (attorneys, auditors, and investigators) to work on a part-time basis, provided that the part-time employee work exclusively on MFCU matters while on duty for the Unit. Consistent with this policy, we propose to replace the term "employ or employee" with definitions for the terms "full-time employee," "part-time employee," and "exclusive effort" to help clarify the staffing requirements for MFCUs. We also propose to define professional employee to mean an investigator, attorney, or auditor.

In § 1007.1, we propose to define "full-time employee" to mean an employee of the Unit who has full-time status as defined by the State. Similarly, we propose to define "part-time employee" to mean an employee of the Unit who has part-time status as defined by the State. In § 1007.13(d), we propose to require that professional employees, whether full time or part time, devote "exclusive effort" to the work of the Unit, consistent with OIG's longstanding policy. We therefore also propose to add a definition of "exclusive effort" to mean that professional employees devote their efforts exclusively to the functions and responsibilities of a Unit, as described in this part. As under the current definition of "employee," the proposed definition for "exclusive effort" requires that duty with the Unit be intended to last for at least one year and would include arrangements in which an employee is on detail or assignment from another government agency, but only if the detail or arrangement is intended to last for at least one year. An employee detailed to the Unit from another government agency would need to work exclusively for the Unit on MFCU matters and would not be able to allocate time to both the home agency and the Unit. As discussed more fully in 1007.13 Staffing Requirements, OIG believes that "exclusive effort" should ensure that professional employees do not engage in outside employment that might jeopardize the distinct nature and specialized skills of the Unit.

These proposed definitions are consistent with OIG existing policy as found in State Fraud Policy Transmittal 2014–1 (March 14, 2014).

We also discuss these proposed definitions in section 1007.13 Staffing.

2. Director

Under proposed § 1007.13 paragraph (c), we specify that each Unit must employ a director who supervises all Unit employees. We propose to add the term "director" to § 1007.1 to mean an employee of the MFCU who supervises the operations of the Unit, either directly or through other MFCU managers.

3. Fraud

We propose to add a definition of fraud at § 1007.1 to clarify that the scope of MFCU authority to investigate "any and all aspects of fraud" encompasses any action for which civil or criminal penalties may be imposed under State law. This definition is similar to the definition of fraud contained in CMS program integrity regulations at 42 CFR 455.2, but, consistent with the MFCUs' responsibility for both criminal and civil fraud, incorporates the definition of intent that applies in a civil case.

The primary mission for MFCUs has been the investigation and prosecution (or referral for prosecution) of criminal violations related to the operation of a Medicaid program and of patient abuse and neglect in Medicaid-funded facilities and in board and care facilities. However, State and Federal health care prosecutors commonly use both criminal and civil remedies, and OIG attorneys use administrative remedies, to achieve a full resolution of provider fraud cases. The Deficit Reduction Act of 2005 (Pub. L. 109–171) added § 1909 to the Act to provide a financial incentive for States to enact their own false claims acts establishing liability to the State for the submission of false or fraudulent claims to the State's Medicaid program.

Further, OIG has issued policy guidance that civil actions, including imposition of penalties and damages, are an appropriate outcome of investigations by MFCUs, particularly when providers lack the specific intent required for prosecution under criminal fraud statutes. (State Fraud Policy Transmittal No. 99–01, December 9, 1999). Specifically, OIG stated that meritorious civil cases that are declined criminally should be tried under State law or referred to the U.S. Department of Justice or the U.S. Attorney's Office, as well as the OIG Office of Investigations. As discussed in section 1007.11 Functions and Responsibilities of the Unit, we propose to require at new § 1007.11(e)(4) that appropriate referrals of civil actions be made to Federal investigators or prosecutors, or OIG attorneys.

4. Program Abuse

We propose to define the term "program abuse" at § 1007.1 to make clear that, for purposes of FFP in MFCU expenditures, program abuse includes only improper provider practices that fall short of acts for which civil or criminal penalties are warranted. Current regulations at § 1007.19(e)(1) prohibit FFP in MFCU expenditures for investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve "substantial allegations or other indications of fraud."

Congress has expanded the range of Federal civil and administrative sanctions available when false and fraudulent provider practices do not reach the level of intent required for criminal prosecution. In addition, Congress encouraged States to enact their own false claims laws. Our policy continues to be that FFP is available to MFCUs for investigations involving reasonable indications of either civil or criminal fraud. Where an overpayment has been identified in a matter in which the MFCU has determined that neither civil nor criminal enforcement action is warranted, the MFCU should refer the matter to the State Medicaid agency for collection.

5. Abuse or Neglect of Patients

Section 1903(q)(4) of the Act requires that, to be certified by the Secretary, MFCUs must have procedures for reviewing complaints of abuse or neglect of patients in health care facilities that receive Medicaid payments. In addition, the Act requires that Units have procedures for acting on these complaints under the criminal laws of the State or for referring the complaints to other State agencies for action. To clarify the scope of Units' duties and responsibilities, we propose to amend § 1007.1 to add definitions of the terms "abuse of patients" and "neglect of patients." We propose to define the term "abuse of patients" to mean willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical or financial harm, pain or mental anguish. We propose to define the term "neglect of patients" to mean willful failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. With regard to each of the terms, we propose to include within the definitions a recognition that the scope of what constitutes "abuse of patients" and "neglect of patients" includes those acts (and, with regard to the crime of neglect, omissions) that may constitute a criminal violation under applicable State law.

6. Misappropriation of Patient Funds

The Department included "misappropriation of [a] patient's private funds" as part of the scope of MFCUs' investigative authority when it issued current § 1007.11(b)(1). In the notice of final rulemaking, the Department explained that investigating "misuse of private funds being held for patients by health care facilities" would be "a natural outgrowth of an investigation of the facility for program fraud or patient abuse or neglect" and would fall under a MFCU's authority to investigate any and all aspects of provider fraud. (43 FR 32078, 32080 (July 24, 1978)).

We are maintaining this authority in the revised regulation and are including a definition of the term "misappropriation of patient funds" to mean the wrongful taking or use, as defined under applicable State law, of funds or property of a patient residing in a health care facility or board and care facility.

We chose not to specify that the patient's funds have to be held in the facility, given that misappropriation of a patient's funds may include financial fraud regarding a patient's assets that are maintained in financial accounts in any location. We also chose not to specify that the perpetrator of the misappropriation of patient's funds has to be an employee of the facility where the patient resides. Because of the many scenarios that exist with respect to misappropriation of patient funds, we invite comment on the rule not specifying the location of the patient funds or the possible perpetrator of the misappropriation.

7. Board and Care Facility

Congress, in the initial MFCU legislation, required MFCUs to investigate patient abuse or neglect only in health care facilities receiving Medicaid payments. In 1999, as part of TWWIIA, Congress amended section 1903(q)(4) of the Act to give Units the option to investigate patient abuse or neglect in non-Medicaid "board and care" facilities, as defined in the statute.

We are proposing to amend § 1007.11 to incorporate the statutory authority for MFCUs to choose to investigate complaints of abuse or neglect in board and care facilities, regardless of the source of payment, and to add the statutory definition of "board and care facility" to the definitions at § 1007.1. Such facilities include assisted living facilities in current terminology.

8. Health Care Facility

We are proposing to add a definition of "health care facility" to clarify the scope of MFCU-required functions and responsibilities in connection with the investigation of complaints of neglect or abuse of patients in such facilities, consistent with section 1903(q)(4)(A) of the Act and with Medicaid program regulations.

Specifically, 42 CFR 447.10(b) defines a "facility" as "an institution that furnishes health care services to inpatients" and 42 CFR 435.1010 defines an "institution" as "an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor," and "in an institution" as an individual who is admitted to live there and receive treatment or services provided there that are appropriate to his requirements." Consistent with these definitions, we propose to add a definition at § 1007.1 to clarify that a "health care facility" is "a provider that receives payments under Medicaid and furnishes food, shelter, and some treatment or services to four or more persons unrelated to the proprietor in an inpatient setting."

9. Provider

We propose to modify the definition of provider to include those who are required to enroll in a State Medicaid program, such as ordering and referring physicians. While we believe the regulation's longstanding definition of provider includes managed care and other types of providers that operate in the current healthcare environment, we think that including ordering and referring physicians in the definition clarifies that providers who are not furnishing items or services for which payment is claimed under Medicaid can be the subject of a MFCU investigation and prosecution.

1007.3 Statutory Basis and Scope

The Secretary delegated to OIG the authority under sections 1903(a)(6) and (b)(3) to pay the FFP amounts of State expenditures for the establishment and operation of a MFCU and, under section 1903(q), to determine whether a MFCU meets the statutory requirements to be certified as eligible for Federal payments. We propose to revise § 1007.3 to more comprehensively set forth the statutory basis and organization of this rule, and to explicitly reference OIG's authority to certify whether a Unit has demonstrated that it is effectively carrying out its required functions under this part.

We also propose to revise § 1007.3 to reflect current law at § 1902(a)(61) of the Act requiring a State to provide in its Medicaid State plan that it operates a MFCU that "effectively carries out the functions and requirements" described in Federal law, as determined in accordance with standards established by OIG, unless the State demonstrates that a Unit would not be cost-effective because of minimal Medicaid fraud and that the State adequately protects Medicaid patients from abuse and neglect without the existence of a Unit. CMS retains the authority to determine a State's compliance with Medicaid State Plan requirements in accordance with § 1902 of the Act.

Congress initially established a matching rate of 90 percent for 12 quarters to give States an incentive to develop a MFCU. Later, as a continuing incentive, Congress provided that after the initial 12 quarters of 90 percent Federal matching, MFCUs would receive Federal matching of 75 percent of the ongoing costs of operating a MFCU.

Regulations at both § 1007.3 and § 1007.19(a) provide that a State will receive Federal reimbursement for 90 percent of the costs of establishing and operating a State MFCU. To eliminate redundancy, and to reflect the current statute's FFP provisions, we propose to remove the statement regarding 90 percent Federal funding at § 1007.3. We propose to retain the provision at current § 1007.19(a) and to amend it to reflect the current statute's limitation of 75 percent FFP for the operation of a MFCU after the initial 12 quarters.

Subpart B—Requirements for Certification

We propose to add a new Subpart B "Requirements for Certification," containing sections 1007.5 through 1007.17.

1007.5 Single Identifiable Entity Requirement

Section 1903(q) of the Act defines the term "State Medicaid fraud control unit" to mean "a single identifiable entity of the State government which the Secretary certifies (and recertifies) as meeting" statutory requirements. This basic requirement is reflected in current § 1007.5 and is widely accepted as a prerequisite for establishing and operating a Unit. We propose to amend the MFCU regulations to define the phrase "single identifiable entity" and to clarify that Units must satisfy the definition to be certified and recertified.

We propose that Units have the following characteristics to be considered a "single identifiable entity in State government" and to be eligible for certification and recertification. Units must: (1) Be a single organization reporting to the single Unit director; (2) operate under its own budget that is separate from that of its parent division or agency; and (3) have the headquarters office and any field offices each in their own contiguous space.

We believe that each of these three characteristics is necessary to ensure that Unit is able to operate independently of its parent agency and to maintain its independent character as a single, identifiable entity. We believe that these characteristics are consistent with the statement at time of enactment by the Senate Committee on Finance that "a separate Statewide investigative entity" substantially increases the rate of prosecutions and convictions (Senate Report 95–453 (September 26, 1977), page 35). We also believe, on the basis of our observation and knowledge of the 50 existing Units, that Units generally share these characteristics and operate under the assumption that each of the characteristics is required for certification purposes. We invite comment on these newly articulated requirements for determining whether a Unit would be considered a single identifiable entity.

Specifically, we believe that all Unit employees reporting to a single Unit director provides the most efficient management structure and helps to ensure that the Unit can act independently of its parent agency. Secondly, to ensure that a Unit has the resources to undertake its mission, to operate efficiently and effectively, and to continue as an ongoing operation, we believe a Unit should operate under its own budget that is separate from that of its parent agency.

Finally, we also believe that having headquarters and any field offices each in their own contiguous space leads to the most efficient conduct of Unit business by fostering a Unit's multidisciplinary approach of investigators, attorneys, auditors, and other employees working together on cases and helps ensure that employees devote their exclusive effort to MFCU purposes. Further, we believe that allowing MFCU employees to work in non-contiguous space alongside other State employees would undermine the ability of MFCU management to monitor whether MFCU employees are devoted exclusively to the mission of the MFCU. Headquarters or field offices would be considered duty stations, and telework and other "out of duty office" work arrangements are not precluded, if permitted under State policies. We believe that all Unit offices currently operate in contiguous space, although in certain larger Units the contiguous space may, for example, be on separate floors of the same building. We believe that such arrangements qualify as "contiguous" as long as the separation permits the Unit's three professional groups to interact effectively in the course of their duties. For example, OIG does not believe that an office arrangement would be contiguous if all or groups of Unit investigators, or attorneys, were located in a different space from the rest of the Unit.

1007.7 Prosecutorial Authority Requirement

Section 1903(q)(1) of the Act provides for three alternative prosecutorial arrangements for a State MFCU, depending on the location of criminal prosecuting authority in the State. Current § 1007.7(b) states that if there is no State agency with Statewide authority and capability for criminal fraud prosecutions, the Unit must establish formal procedures that ensure that the Unit refers suspected cases of criminal fraud to the appropriate prosecuting authorities. We propose that § 1007.7(b) be amended to also include such procedures for patient abuse and neglect prosecutions, consistent with the language of the statute.

Section 1007.7(c) requires a formal working relationship with the office of the State Attorney General. We propose that § 1007.7(c) be amended to reference the office of the State Attorney General "or another office with Statewide prosecutorial authority." We also propose to amend §§ 1007.7(b) and

1007.7(c) to clarify that the formal procedures be written. Finally, we propose to make a minor wording change to emphasize the requirement that a Unit be organized according to one of three prosecutorial arrangements and to change the name of § 1007.7 to "What are the prosecutorial authority requirements for a Unit?" to more accurately describe its contents.

1007.9 Relationship to, and Agreement with, the Medicaid Agency

Current § 1007.9(d) requires that the MFCU enter into an agreement with the Medicaid agency to ensure the Unit has access to fraud case referrals and case information. Companion regulations governing fraud control activities of the Medicaid agency impose obligations on the Medicaid agency to identify, investigate, and refer suspected fraud cases, but do not explicitly require an agreement with the Unit. CMS enforces the regulations at 42 CFR part 455 (See September 30, 1986 final rule (51 FR 34787)). Given the importance of the working relationship between the MFCU and Medicaid agency, in this joint proposed rule, OIG and CMS propose to add additional guidance at § 1007.9, and through the addition of a new § 455.21(c), to clarify that both the Medicaid agency and the MFCU must enter into a written agreement, such as a memorandum of understanding (MOU).

We also propose to add to both § 1007.9(d)(3) and to the new § 455.21(c) that the MOU include the following required elements. First, we propose that the MOU must include an agreement to establish a practice of regular communication or meetings between the MFCU and the Medicaid agency to discuss such matters as case updates, new complaints and possible referrals, documentation and data requests, policy changes, fraud trends, and joint activities. Second, we propose that the MOU must establish procedures for how the MFCU and the Medicaid agency will coordinate their efforts as they carry out their respective responsibilities. Third, we propose that the MOU must establish procedures related to payment suspension and notification of acceptance or declination of cases, as found at §§ 1007.9(e) through 1007.9(h). Finally, we propose that the MOU must be reviewed and, if needed, updated by both the MFCU and the Medicaid agency at least every 5 years to ensure that it reflects current law and practice.

We also propose a minor amendment at § 1007.9(f) which requires that any request by the Unit to the Medicaid agency to delay notification to the provider of a payment suspension under § 455.23 must be made in writing. We propose to add the word "promptly" to that provision. In order to avoid the risk of jeopardizing a MFCU investigation, we think it is important for Units to provide prompt written notice to a Medicaid agency if a provider is the subject of an investigation. Further, we also propose a similar amendment to § 1007.9(g) which requires the Unit to notify the Medicaid agency in writing as to whether the Unit accepts or declines a case referred by the Medicaid agency. We propose that the Unit should make this decision in a timely manner and promptly inform the Medicaid agency of its decision. Again, prompt notification by the MFCU allows the Medicaid agency to uphold a payment suspension, or in the case of a declination, re-establish payments to the provider. Additionally, if a referral is declined by the Unit, the Medicaid agency may pursue administrative actions against the provider in a timely manner.

We propose an amendment at § 1007.9(h) to require the MFCU to provide certification to the Medicaid agency, upon request on a quarterly basis, that any matter accepted on the basis of a referral continues to be under investigation and thus warranting continuation of payment suspension. Under § 455.23(d)(3)(ii), the Medicaid agency must request this certification from the MFCU, but the regulations do not require the MFCU to comply with this request. Placing this responsibility on the MFCU is consistent with the temporary nature of the payment suspension process.

1007.11 Functions and Responsibilities of the Unit

MFCU regulations, in describing the duties and responsibilities of a Unit for patient abuse or neglect, provide in paragraph 1007.11(b)(1): "The unit will also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities." In implementing a Unit's statutory responsibility for patient abuse or neglect, the Department thus expanded responsibility for abuse or neglect to the financial crime of "misappropriation of [a] patient's private funds," but made such cases optional ("may review complaints. . . ."). Cases involving private funds have become a substantial part of MFCU caseloads, reflecting the significance of financial abuse in crimes against seniors and other facility residents.

In our proposed definition in paragraph 1007.1 of "abuse of patients," we have included "financial harm" as one element. Consistent with this definition and with the recognized importance of financial abuse as a type of patient abuse or neglect, we propose to revise the regulation at 1007.11(b)(1) to require the Unit to review complaints involving misappropriation of funds. We believe that making the review of such complaints mandatory is consistent with the broad statutory responsibility for patient abuse or neglect.

The TWWIIA amended section 1903(q) of the Act to allow MFCUs to receive FFP for the investigation and prosecution of Medicare or other Federal health care cases that are primarily related to Medicaid, with the approval of the Inspector General of the relevant Federal agency (most typically, the Inspector General for HHS). We propose to revise § 1007.11 to specify that the MFCU must obtain written permission from the relevant Federal Inspector General to investigate cases of provider fraud in health care programs other than Medicaid. OIG issued guidance for seeking approval for this extended investigative authority from HHS–OIG in State Fraud Policy Transmittal No. 2000–1 (September 7, 2000). In order for OIG to effectively monitor these approvals, we propose to codify at § 1007.17(a)(1)(i) the requirement from the policy transmittal that Units report annually to OIG of any approvals for extended investigative authority from any Federal Inspector General.

TWWIIA also gave MFCUs the option to review complaints of patient abuse or neglect in non-Medicaid board and care facilities, as defined in the statute, and to have procedures for acting on such complaints. For the regulation, we interpret the law's requirement to have "procedures for acting on such complaints" to mean that Units can investigate cases arising from those complaints. Consistent with our proposal to permit investigation of misappropriation of patient funds in health care facilities, we also propose to permit such investigations in board and care facilities.

At new § 1007.11(a)(3), we propose that applicable State laws pertaining to Medicaid fraud include criminal statutes as well as civil false claims statutes or other civil authorities. Further, at new § 1007.11(e)(4), we propose that if no State civil fraud statute exists, MFCUs should make appropriate referrals of meritorious civil cases to Federal investigators or prosecutors, such as the U.S. Department of Justice or the U.S Attorney's Office, as well as to the HHS–OIG Office of Investigations and Office of Counsel to the Inspector General. OIG believes that assessing civil penalties and damages is an appropriate law enforcement tool when providers lack the specific intent required for criminal conviction but satisfy the applicable civil standard of liability. This proposal is consistent with State Fraud Policy Transmittal No. 99–01 (December 9, 1999) which encouraged MFCUs to pursue potential civil remedies when no potential criminal remedy exists. Additionally, as discussed in Section B, we propose to add a definition of "fraud" that clarifies MFCU authority to investigate and prosecute both criminal and civil fraud.

At § 1007.11(c), we propose to clarify that when a Unit discovers that overpayments have been made to a provider or facility, the Unit must either recover the overpayment as part of its resolution of a fraud case or refer the matter to the proper State agency for collection.

At § 1007.11(e)(1) and (2), we propose to retain the current requirement that a Unit make available to Federal investigators and prosecutors and OIG attorneys all information in its possession concerning Medicaid fraud and that the Unit coordinate with such officials any Federal and State investigations or prosecutions involving the same suspects or allegations. The Federal and State governments share responsibility for the investigation and prosecution of Medicaid provider fraud, and Federal agencies may need to coordinate an action in a particular State with other Federal law enforcement efforts.

We also propose to expand paragraph (e) in three other ways to further ensure the effective collaboration between the Units, OIG investigators and attorneys, other Federal investigators and prosecutors.

First, we propose in paragraph (e)(3) to specify that a MFCU establish a practice of regular meetings or communication with OIG investigators and Federal prosecutors. In States in which OIG does not have the resources to maintain a regular presence, such communication could be by telephone or video conference. Given OIG's coordinating role on Federal health care fraud cases, we believe that regular contact with OIG investigators is critical in each of the States. For Federal prosecutors, the Unit should establish a schedule of meetings or regular communication with one or more of the U.S. Attorneys' Offices with jurisdiction in the State. In most jurisdictions, it is standard practice for the U.S. Attorney to operate a health care fraud task force, and regular communication can be achieved through regular participation by the Unit on the health care fraud task forces.

We believe that requiring regular meetings or communication with OIG investigators and with Federal prosecutors will strengthen relationships, enhance the effectiveness of fraud investigations and prosecutions, and ultimately improve the integrity of the Medicaid program. We believe that such communication is routine in most of the Units, but we also know through our onsite reviews that there are Units with a lack of communication with OIG investigators and Federal prosecutors.

Second, we propose to specify in paragraph (e)(4) that Units make appropriate referrals to OIG investigators and attorneys, other Federal investigators, and Federal prosecutors. It is not unusual for Units to investigate cases of Medicaid fraud that involve Medicare or other Federal programs, and such cases should be referred to OIG investigators, unless the MFCU receives authority under § 1007.11(a)(2) to investigate the Medicare or other program fraud itself. Many such referred cases will be investigated jointly by the MFCU and the Federal Government, and the investigation will benefit from the combined skills and resources of both offices. Also, health care fraud cases often involve both criminal fraud as well as the possibility of a civil recovery through application of a civil false claims act. As a matter of policy, we have for many years requested MFCUs to refer such civil cases to Federal investigators or prosecutors for possible application of the Federal civil false claims act. Many States have the ability to pursue civil actions either through State civil false claims acts or other State authority, but other States may lack the ability to prosecute such cases. Also, in many States, there may be a lack of investigative resources to pursue such cases even if the State has the authority to do so.

Finally, we further propose in paragraph (e)(5) that Units develop written procedures for those items addressed in paragraphs (1)through(4). We believe that most Units comply with each of these steps as a routine part of their process, but we also believe that it is important to formalize them as part of the Unit's written procedures because of the critical importance of case coordination. This will also permit OIG, in its oversight of the Units, to verify that coordination procedures are in place. Our proposal does not specify what the procedures should be, but would allow the MFCU and its Federal partners to tailor procedures to most effectively meet the needs in their State. An example of an established procedure for paragraph (e)(3) would be the sharing between the Unit and OIG's Office of Investigations weekly or monthly reports describing newly opened cases as well as a schedule of monthly or quarterly meetings.

We propose to revise § 1007.11(f) to require a Unit to provide adequate safeguards to protect sensitive information and data under the Unit's control. Under the current regulation at § 1007.11(f), MFCUs have been required to safeguard privacy rights and to prevent the misuse of information under their control. In the past, this requirement largely referred to paper case files and other case-related materials, such as evidence. Many MFCUs now maintain case information in an electronic format and do not rely exclusively on paper case files. Because Unit electronic record and data systems may contain personally identifiable and other sensitive information, Units need to protect that information with a robust data security program. Such a program should guard against unauthorized access or release of case information as well as unauthorized intrusions from external sources.

Finally, consistent with the MFCU mission to prosecute Medicaid provider fraud and patient abuse or neglect, we propose to amend the regulations at new § 1007.11(g) to require that a Unit transmit to OIG, for purposes of excluding convicted individuals and entities from participation in Federal health care programs under section 1128 of the Act, pertinent documentation on all convictions obtained by the Unit, including those cases investigated jointly with another law enforcement agency, as well as those prosecuted by another agency at the local, State, or Federal level. This requirement would be consistent with the longstanding published performance standard for MFCUs that such referrals be made. By referring convicted individuals or entities to OIG for exclusion, MFCUs help to ensure that such individuals and entities do not have the opportunity to defraud Medicaid and other Federal health programs or to commit patient abuse or neglect. Historically, referrals by MFCUs have constituted a significant part of the exclusions imposed each year by OIG.

We propose that such information be provided within 30 days of sentencing or, if MFCUs are unable to obtain pertinent information from the sentencing court within 30 days, as soon as reasonably practicable. We propose this "reasonableness" provision because we are aware that courts may on occasion not provide pertinent documents to MFCUs in a timely manner. In assessing whether such additional time is reasonable, OIG will assess the steps the MFCU has taken to obtain the court documents in a timely manner.

Finally, at § 1007.11(a) through (c), in describing the activities for which a Unit is responsible, we propose to revise references to "the State [Medicaid] plan" to instead refer to "Medicaid," and to refer to a "provider" (defined in section § 1007.1 in relationship to Medicaid), rather than "provider of medical assistance under the State Medicaid plan." This reflects the reality that many States operate under State plan waiver programs and that provider activities in waiver programs were not intended to be excluded from a Unit's responsibility. This is consistent with the statute's broad description of a Unit's function as extending to "any and all aspects of fraud in connection with . . . any aspect of the provision of medical assistance. . . ." Section 1903(q)(3) of the Act, 42 U.S.C. 1396b(q)(3).

1007.13 Staffing Requirements

Full-Time and Part-Time Employees and Exclusive Effort

Current regulations at § 1007.19(e)(4) prohibit FFP for "any management function for the Unit, any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers that is not performed by a *full-time employee of the Unit.*" (Emphasis added.) Similarly, the current definitions at § 1007.1 define "employ" or "employee" to mean "full-time duty intended to last at least a year." In recognition of changes to the modern workplace, OIG has taken a flexible approach with respect to the employment of professional employees who may wish to have part-time schedules. OIG has thus also interpreted the "full-time" rule to permit FFP for professional employees who are employed on a part-time basis, as long as their professional activities are devoted "exclusively" to MFCU purposes.

We therefore propose to revise the regulations to clarify that MFCU professional employees do not need to be "full time" to receive FFP, but to retain the longstanding policy and practice that FFP is permitted only for MFCU professional employees who are devoted "exclusively" to the MFCU mission except for limited circumstances that are specifically described in the regulation. Therefore, we propose to add definitions in 1007.1 of "part-time employee," "full-time employee," "professional employee," and "exclusive effort."

We thus propose to add a new § 1007.13(d) that describes the requirements for professional employees to receive FFP. Paragraph (d)(1) would require that, for professional employees to be eligible for FFP, they must devote their "exclusive effort" to the work of the Unit. This proposal is also reflected in § 1007.19(e)(4), which would prohibit FFP for "the performance of any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers by a person other than an employee who devotes exclusive effort to the Unit's work."

New § 1007.13(d) would also describe, in paragraphs (d)(2) and (d)(3), two circumstances in which professional employees may perform limited non-MFCU activities: Outside employment during non-duty hours and temporary non-MFCU assignments. These proposals, discussed separately, are consistent with longstanding MFCU practice and OIG policy as expressed in State Fraud Policy Transmittal No. 2014–1 (June 3, 2014).

As also stated in the preamble to the regulations regarding the prohibition of FFP for other than a professional "full time employee," we believe that "exclusive effort" by professional employees is necessary because the employment of temporary staff, or the occasional pursuit of isolated cases by different investigators and prosecutors, will undermine a Unit's ability to create an effective team with specialized knowledge of health care fraud and patient abuse or neglect. 43 FR 32078 (July 24, 1978). We also believe that the character of a MFCU as a "single identifiable entity," and the development of specialized expertise in Medicaid fraud and patient abuse or neglect, would be frustrated by the employment of professional employees whose responsibilities are split between the MFCU and another agency. We believe that the long-standing policy and practice of MFCUs employing professional employees devoted exclusively to the MFCU mission has been key to the success of MFCUs.

One limitation on the use of part-time professional employees is the certification requirement found at § 1007.13(a), retained in this rulemaking, that MFCUs "will employ sufficient professional, administrative, and support staff to carry out its duties and responsibilities in an effective and efficient manner." For example, Unit management may want to consider whether employing key staff, such as the director or chief investigator, on a part-time basis would undermine the Unit's effectiveness and efficiency.

Outside Employment

We further propose, in § 1007.13(d)(2), to reflect the restrictions contained in our current policy regarding outside employment of professional employees during non-duty hours. Specifically, in subsection (d)(2), we propose that, to be eligible for FFP, professional employees may not be employed by other State agencies during non-duty hours. As stated previously, we believe it is important to maintain the separate nature of the MFCU because of the potential compromise between the MFCU mission and other missions of the State.

We do not have the same concerns about employment outside of State government. As part of paragraph (d)(2), we also propose that professional employees may obtain employment outside of State government, if State law allows it, but only if the outside employment presents no conflict of interest to Unit activities. A common example of such employment would be a MFCU auditor working as a tax accountant during his or her off-hours. The Unit should follow its State's process to ensure that any proposed outside employment is in accordance with applicable professional standards and State ethics rules or policies. In the absence of a State process, the MFCU should develop its own process to avoid conflicts of interest between a professional employee's outside employment and the work of the MFCU.

Temporary Non-MFCU Assignments

In proposed § 1007.13(d)(3), we reflect the current policy and practice regarding temporary, non-MFCU assignments. Paragraph (d)(3) would permit MFCU professional employees to engage in temporary assignments that are not within the functions and responsibilities of a MFCU only if such assignments are truly limited in duration. As with other non-MFCU activities, such assignments would not be funded by the Federal MFCU grant. For example, MFCU professional employees have been deployed to assist in maintaining order during natural disasters and other Statewide emergencies.

We expect that such situations will be unusual and infrequent, so MFCU directors should assess each on a case-by-case basis and may consult with OIG in determining whether the assignments are appropriate. Before directing staff to take a temporary assignment, a Unit should determine whether the assignment has a limited and defined duration and whether the assignment would pose any conflict with MFCU operations. The Unit may also want to consider whether the skills and expertise of the employees(s) are necessary for the assignment. If a MFCU permits temporary non-MFCU assignments, the Unit must document all hours spent on the assignment and ensure that the hours are excluded from the MFCU's financial status reports for purposes of receiving FFP.

Direction and Supervision of the Unit

We propose to add a requirement at § 1007.13(c) that the Unit must employ a director who supervises all Unit employees. Regulations do not specify that a MFCU must have a director, although all MFCUs for many years have operated with a director. We have found that having a director to whom all Unit employees ultimately report is critical to the successful management and operation of a MFCU. We also propose to define "director." We further note that in some small Units, the director is the Unit's only attorney and can be considered the one required attorney under § 1007.13(b).

Proposed § 1007.13(d)(4) would further require that professional employees must be under the direction and supervision of the MFCU director (or, in larger Units, a subordinate Unit manager). This requirement has been a part of OIG's longstanding interpretation of the full-time rule and the statutory definition of a Unit as a "single, identifiable entity." Allowing attorneys or investigators to report to supervisory officials outside the Unit would both undermine the ability of the Unit director to effectively manage the Unit and would interfere with the ability of MFCU professional employees to collaborate as a team.

Use of Consultants and Other Contracts

Consistent with the proposal to require exclusive effort by professional employees to receive FFP, we also propose to clarify, in § 1007.13(g)(2), that the Unit may not receive FFP when it relies on individuals not employed directly by the MFCU for the investigation or prosecution of cases, including through consultant agreements or other contractual arrangements. As with the exclusive effort rule, we believe that the contracting out of investigative or legal functions would undermine the character of MFCUs as single, identifiable entities. This proposal is consistent with a longstanding practice of not allowing the contracting out of the investigation or prosecution of cases. We note that this proposal does not affect those MFCUs contained in state entities that lack the authority to prosecute fraud or patient abuse or neglect. Such MFCUs rely on non-MFCU prosecutors in other government agencies, who are not paid on the grant, to bring MFCU cases to trial.

However, we also propose to clarify at § 1007.13(g)(1) that Units may receive FFP for the employment of, or have available through consultant agreements or other arrangements, individuals with particular knowledge, skills, and/or expertise that a Unit believes will support the Unit in the investigation or prosecution of cases. For example, Units may have consultant agreements with expert witnesses or other forensics experts or may employ nurses to support investigations and prosecutions.

MFCU Employee Training

Regulations do not address training of MFCU professional employees. Because of the importance of training for MFCU professionals, we propose to add a requirement at § 1007.13(h) that a Unit must provide training for its professional employees for the purpose of establishing and maintaining proficiency in the investigation and prosecution of Medicaid fraud and patient abuse and neglect. This requirement is consistent with MFCU performance standards, which state that a Unit "conduct training that aids in the mission of the Unit."

Other Staffing Issues

We propose to clarify several staffing issues by this regulation, including requiring a director; allowing part-time administrative and support staff; and clarifying the qualifications of attorneys, auditors, and the senior investigator.

We clarify at § 1007.13(e) that a Unit may hire administrative and support staff on a part-time basis. Part-time administrative and support staff, unlike professional employees in the new § 1007.13(d)(2), may hold another part-time State job or allocate their time between two offices within the Office of the Attorney General, for example. In those instances, we will continue to require that all claims for Federal reimbursement for part-time support staff be supported with proper documentation of hours worked.

We also propose minor clarifications at § 1007.13(b) of the qualifications of attorneys, auditors, and the senior investigator. For attorneys, we propose that they must be capable of prosecuting health care fraud or criminal cases. For auditors, we propose a minor change, that an auditor be capable of reviewing financial records, rather than the current language, that an auditor is "capable of supervising the review of financial records." We also propose to expand requirements to include that an auditor be capable of advising or assisting in the investigation of patient abuse and neglect. For the senior investigator, we propose to eliminate the prerequisite of "substantial experience in commercial or financial investigations," and propose instead only that the senior investigator be capable of supervising and directing the investigative activities of the Unit. Further, consistent with 1007.13(a), requiring that a Unit hire sufficient staff to carry out its duties and responsibilities effectively and efficiently, we propose the requirement that Units hire one "or more investigators."

1007.15 Certification

We propose at § 1007.15(b) to clarify that initial certification will be based on the information and documentation specified at § 1007.15(a). To receive Federal reimbursement, a MFCU must be certified and annually recertified by OIG, consistent with section 1903(a)(6) of the Act. For initial certification, a Unit must meet the basic requirements established in section 1903(q) as implemented in this part. Basic certification requirements include organization, location, relationships with the Medicaid agency, Unit duties and responsibilities, and staffing. We also propose to eliminate the requirement at § 1007.15(a)(6) that an initial application include a projection of caseload. We believe that it is unrealistic for State or territory preparing an initial application to provide any meaningful caseload projection.

1007.17 Recertification

A MFCU must be recertified annually by OIG to receive Federal reimbursement for a portion of its costs. Forty-nine States and the District of Columbia have established and operate a Unit. We propose to revise regulations to reflect the recertification process that has evolved since the program began. The proposed regulation at § 1007.17 would: (1) Describe the information that must be provided to OIG, including the recertification reapplication and statistical reporting; (2) describe other information considered for recertification; (3) clarify the basis for recertification by OIG; (4) create a procedure in which OIG notifies the Unit whether the reapplication is approved or denied by the Unit's recertification date; (5) clarify that an approved reapplication may be subject to special conditions; and (6) establish basic procedures for reconsideration of an OIG denial of recertification.

Requirements for Recertification

Section 1903(q)(7) of the Act requires a Unit to submit to the Secretary an application and "annual report containing such information as the Secretary determines, by regulations, to be necessary to determine whether the entity meets the other requirements of this paragraph." Current regulations at § 1007.17 describe the content of the "annual report," including certain statistical data and budget information, a narrative evaluating performance, any specific problems that have arisen over the year, and other matters that have impaired the Unit's effectiveness.

We propose to revise § 1007.17(a) to describe the information that Units must submit annually to OIG to fulfill the statutory mandate that Units provide "annual reports" to the Secretary. Under our proposal, Units may choose to no longer submit a document labeled "annual report," so long as the items described in the proposed regulation are submitted to OIG on an annual basis in the timeframes established for each Unit as part of its annual reapplication. Such information includes statistical and other information provided to OIG in an electronic format. We describe below the items that must be submitted by each MFCU over the course of the year that satisfy the requirement for an annual report.

Narrative and approved data mining activities. First, as part of the reapplication, at the new § 1007.17(a)(1), we would continue to require the narrative from current § 1007.17(h) that evaluates the Unit's performance, describes any specific problems it has had in connection with the procedures and agreements under this part, and discusses other matters that have impaired its effectiveness. The narrative should also include any extended investigative approvals, pursuant to proposed § 1007.11(a)(2). Second, for Units that have received OIG approval to conduct data mining under § 1007.20, we would also continue to require that they submit information on their data mining activities.

Information Request. At the new § 1007.17(a)(1)(iii), we propose an annual requirement that Units provide information to OIG addressing their compliance with this part and adherence to MFCU performance standards. This proposed provision would align the regulation with current practice in which the Units, as part of their reapplication, provide information requested by OIG for that year. We have also included in the proposed regulation a requirement that Units advise OIG of significant changes since the prior year's recertification. This would replace a provision contained in § 1007.15(c)(1), requiring the Unit to advise the Secretary of any significant changes in the information and documentation submitted with the initial MFCU application. However, we think it is more appropriate for a Unit to advise OIG of significant changes that occurred during the prior year, rather than since its initial application, which for some Units could be 30 years or more. The information requested by OIG prompts a Unit to answer questions about all aspects of its operations, which should lead to responses that describe any significant changes.

Statistical report. Under the new § 1007.17(a)(2), we propose to amend the regulations to include the requirement that MFCUs submit an annual statistical report by November 30 of each year for the prior Federal fiscal year (FFY), containing the required data elements developed by OIG in collaboration with the MFCUs. Units submit to OIG statistical reports that include information on staffing, investigations, criminal prosecutions and civil actions, and other case outcomes. The statistical reports would be used, along with other information, to evaluate MFCUs for recertification. The statistical data provided by the Units would also enable OIG to assess performance and identify trends for all MFCUs.

We propose that the requirement for a separate annual statistical report replace the statistics that are required as part of the current annual report at § 1007.17(a) through (e). This would eliminate duplication of reported statistics and provide a standard timeframe (the FFY) for reporting rather than the current annual report requirement, which is tied to the recertification period of each Unit and is often a different year period than the FFY. Further, the current regulation requires the Unit to submit projected performance statistics for the upcoming recertification period. We no longer require this level of detail because of the difficulty of providing projected statistics. Finally, the current regulation requires a Unit to submit its costs incurred for the recertification period. Because a Unit submits an official Federal financial form (SF–425) reporting its costs to OIG for the FFY, we do not need an unofficial accounting of costs for the recertification period which, as noted, is often different from the FFY.

We also propose at the new § 1007.17(b) to include other information not submitted by the MFCU, but which, when appropriate, is reviewed for recertification. This would include information obtained during periodic onsite reviews and other information OIG deems necessary or warranted. It may also include obtaining feedback from stakeholders, such as the Medicaid program integrity director and the OIG special agent-in-charge, on their working relationships and business processes with the MFCU.

Basis for Recertification

Section 1007.15(d) describes items that OIG considers when recertifying a MFCU, including the information on the MFCU's reapplication, the annual report, the effective use of resources in investigating and prosecuting fraud, and "other reviews or information" deemed necessary or warranted. We propose to describe at the new § 1007.17(c) OIG's basis for recertifying a MFCU, including specifying the "other reviews or information" OIG deems necessary or warranted. To determine whether a Unit has demonstrated that it effectively carries out the functions and responsibilities of this part for purposes of recertification, OIG examines a Unit's compliance with this part and other applicable Federal regulations as well as with OIG policy transmittals. OIG consults with MFCU stakeholders. OIG also uses the statutory performance standards that Units must satisfy under § 1902(a)(61) of the Act as a guideline in evaluating whether a Unit is effectively and efficiently carrying out its duties and responsibilities.

Further, as described in § 1007.11, in addition to the responsibility of having a Statewide program for investigating and prosecuting (or referring for prosecution) Medicaid fraud, MFCUs are also responsible for reviewing complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and either investigating the complaints or referring them to the appropriate authority, which we interpret to mean that Units can investigate and prosecute cases arising from those complaints. At § 1007.17(c)(5), we propose to also include effective performance of the latter responsibility as an additional consideration in OIG's recertification review. OIG is aware that Units apportion their resources between the two responsibilities in different ways but believes that Units should not neglect one type of case.

Recertification Notification and Denial of Recertification

Section 1007.15(d)(l) provides that a Unit will be notified promptly whether its reapplication has been approved. We propose to modify the notice procedure at proposed § 1007.17(d) to state that OIG will provide notice of approval or denial of recertification by the Unit's recertification date. We also propose that the recertification approval may be subject to special conditions or restrictions, as provided in 45 CFR 75.207, and may require corrective action. Further, if an application for recertification is denied, we propose in the new § 1007.17(e) that a Unit may request reconsideration of a denial by providing written information addressing the findings on which the denial was based. Within 30 days of receipt of the request for reconsideration, OIG provides a final decision, and its basis, in writing to the Unit and notifies CMS if the Unit does not meet the requirements for recertification. Under section 1903(a)(6), the Federal Government may not provide FFP in costs incurred by a Unit that is not certified by OIG as meeting the requirements for operating a Unit as found at section 1903(q).

Subpart C—Federal Financial Participation

1007.19 FFP Rate and Eligible Costs

In the initial legislation establishing MFCUs, Congress provided that Federal funds would reimburse States for 90 percent of their MFCU costs for 12 quarters in order to encourage the development of State MFCUs. In 1980, Congress amended section 1903(a)(6) to provide a continuing incentive by authorizing ongoing Federal reimbursement at 75 percent of a MFCU's allowable costs after the first 12 quarters of operation.

We propose to modify § 1007.19(a) to reflect that, under law, FFP is available at the rate of 90 percent during the first 12 quarters of a Unit's operation and at 75 percent thereafter, beginning with the 13th quarter of a Unit's operation. We also propose other modifications to clarify that each quarter of reimbursement at the 90 percent matching rate is counted in determining when the 13th quarter begins. Quarters of MFCU operation do not have to be consecutive to accumulate for purposes of determining when the 90 percent matching period has ended.

We also propose to amend § 1007.19(d) to clarify in regulation that a Unit may receive FFP for its efforts to increase referrals through program outreach activities. These are activities that most Units currently undertake as a part of their responsibilities under the grant but are not addressed in the program regulations in part 1007. Permissible program outreach activities by the Units may include efforts to educate Medicaid providers, law enforcement entities, and the public about Medicaid fraud, patient abuse or neglect, and MFCU authority and jurisdiction. Program outreach activities may also include the dissemination of outreach and educational materials specifically designed to increase awareness of the MFCU mission that could lead to referrals to the Unit. These outreach materials must be of a de minimus cost and be useful and practical.

We propose to amend § 1007.19(e)(2) to clarify the prohibition on the ability of Units to receive FFP to "identify situations in which a question of fraud may exist." Specifically, the provision prohibits FFP "for expenditures attributable to: [. . .], except as provided under § 1007.20 [allowing Units to seek OIG approval to conduct data mining], efforts to identify situations in which a question of fraud may exist, including the screening of claims and analysis of patterns and practice that involve data mining as defined in § 1007.1." We are proposing to replace "*including* the screening of claims . . ." with "*by* the screening of claims . . ." to clarify the ability of Units to engage in activities, other than data mining, to identify potential civil or criminal fraud in the Medicaid program.

We believe that this revision to the Unit's permissible activities is supported by the following: MFCUs have the ability to work with a variety of State agencies and private referral sources to identify possible fraud and to undertake sophisticated detection activities, such as undercover operations. None of these activities interferes with the program integrity activities of the State Medicaid agency, which we believe was the initial intended purpose of the prohibition. Our proposal would remove from the Medicaid agency the sole burden of identifying potential fraud and would allow MFCUs to be less dependent on referrals from Medicaid agencies.

1007.21 Disallowance Procedures

We propose to amend the regulation in the new § 1007.21 to establish procedures for taking formal disallowances of FFP, for Units to request reconsideration of disallowances and to appeal to the HHS Departmental Appeals Board. The proposal is similar to CMS's requirements for the appeal of disallowances by State Medicaid agencies found at 42 CFR 430.42.

Subpart D—Other Provisions

1007.23 Other Applicable HHS Regulations

We propose to update the listing, contained in § 1007.21, of other applicable HHS regulations that were amended after the current MFCU regulations were promulgated. Specifically, we have updated the reference to the Department's award administration regulations now contained in 45 CFR part 75. 45 CFR part 75 establishes the HHS specific regulations for the Office of Management and Budget (OMB) interim final rule of the Uniform Guidance (UG) at 2 CFR part 200, published on December 26, 2014. We are also updating references to regulations governing HHS Departmental Appeals Board procedures and HHS nondiscrimination policies.

III. Regulatory Impact Statement

We have examined the impact of this rule, as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold, and thus is not considered a major rule. Since the proposed regulation would only implement current practice and policy, we believe the economic impact to be negligible.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.5 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately $144 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain principles and criteria that an agency must follow when it implements a regulation or other policy that has Federalism implications, defined in the Order to mean that the regulation or policy has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Order also requires a level of consultation with State or local officials when an agency formulates and implements a regulation that has Federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute.

We do not believe that this proposed regulation has Federal implications as it would not have a substantial direct effect on the States or on the relationship or distribution of power and responsibilities among levels of government. We also do not believe that the proposed regulation would impose substantial direct compliance costs on States. Rather, the regulation would reflect certain statutory changes governing operation of the MFCUs that have already been implemented and would codify policy and practice involving the organization and operation of the Units. We believe that the content of the regulation is consistent with the partnership between the Federal and State governments that has been established for the financing and administration of the larger Medicaid program. We further believe that any costs related to compliance with the proposed regulation are minimal and not substantial.

However, to the extent that that the proposed regulation is seen as having Federal implications, the proposed regulation is consistent with the principles and criteria established in the Order. The proposed regulation would strictly adhere to constitutional principles and would be deferential to the States with respect to the policymaking and administration of State operations related to the investigation and prosecution of Medicaid provider fraud and patient abuse or neglect. With regard to consultation, the policies contained in the proposed regulation were developed in consultation and collaboration with the States.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, before a collection-of-information requirement is submitted to OMB for review and approval, we are required to provide a 60-day notice in the **Federal Register** and solicit public comment. We propose to revise the scope of our annual collection of information as part of this NPRM to revise the MFCU oversight regulations contained in 42 CFR part 1007. The collection would contain certain mandatory information required annually as outlined at proposed 42 CFR 1007.17 which includes a reapplication of a brief narrative, data mining outcomes, and an information request as well as an annual statistical report. All of these items would replace the "Annual Report" required at current § 1007.17. Specifically, the proposed reapplication contains several elements. First, it would include a brief narrative that evaluates the Unit's performance, describes any specific problems it has had, and discusses any other matters that have impaired its effectiveness. This narrative could be in any format, as determined by each MFCU.

Second, those MFCUs approved by OIG to conduct data mining under 42 CFR 1007.20 are required by the current regulation to submit the costs expended by the MFCU on data mining activities, the amount of staff time devoted to data mining activities, the number of cases generated from those activities, the outcome and status of those cases, and any other relevant indicia of return on investment from data mining activities. The reporting format for data mining activities is determined by each reporting MFCU.

Third, the proposed reapplication would also include an information request concerning compliance with the statute, regulations, and policy transmittals as well as adherence to the MFCU performance standards. The information request would be in a standard question and answer format and has always been a part of the reapplication.

Fourth, and separate from the reapplication, we propose that MFCUs provide a Federal fiscal year (FFY) annual statistical report containing data points found at proposed 42 CFR 1007.17(b). This is consistent with the MFCU performance standard that a Unit have a case management system that (1) allows efficient access to case information and other performance data from initiation to resolution and (2) allows for reporting of case information. Units maintain case management systems on an ongoing basis and would upload the proposed data to a secure web portal through a Federal service provider, OMB MAX by November 30 of each year. This annual statistical report would replace the statistical information that we propose to no longer require in an "Annual Report," as at 42 CFR 1007.17(a) through (e), although some of the data points are the same or similar to the statistics proposed in the annual statistical report. The proposed new data points would be an enhancement to our current information and would, on a FFY basis, more completely and accurately describe Unit staffing, caseload, criminal and civil case outcomes, collections, and referrals.

We estimate that the burden for these proposed collections would be similar to the burden approved under OMB approval No. 0990–0162. First, the currently approved burden estimate for the "Annual Report" is 88 hours per respondent. Because the burden previously assigned to the "Annual Report" would shift to the separate annual statistical report provided at the end of the FFY, we have re-estimated that preparing the brief narrative would take 3 hours per respondent. Based on reports from MFCU officials, providing information on data mining activities, if required, would require 1 hour of additional burden, as is currently approved. We have then shifted most of the balance of the current "Annual Report" burden (80 hours) to the proposed annual statistical report. We believe that most of the burden for preparing the annual statistical report consists of the ongoing updating of the Unit's case management system and not for the uploading of the actual report, so we believe the estimate is accurate. Second, the recertification reapplication information request has not changed from current practice and is approved under OMB No. 0990–0162. However, based on reports from MFCU officials, we have increased the reapplication information request burden estimate by 4 hours per respondent to 9 hours. Thus, we estimate that after shifting the burden between collections, the total burden would be the same as currently approved.

Based on our knowledge of MFCU staff hourly rates and which MFCU staff person would prepare each collection, we estimate a MFCU official would spend approximately 29 hours at an estimated $38 per hour preparing the reapplication and annual statistical report. We estimate that a MFCU support staff person would spend approximately 64 hours of effort at an estimated hourly rate of $16 per hour to develop draft products, fulfill data entry activities, complete all required administrative functions, and confer with the MFCU supervising official, all of which are necessary to finalize the collection for submission to OIG. Based on these estimated hours and staff wage rates, the weighted average wage rate is $22.85 per hour. Thus, identical to the estimate that was approved under OMB No. 0990–0162, our best estimate is that about 93 burden hours would be expended by each of the 50 MFCUs.

OIG would use the information collected to determine the MFCUs' compliance with Federal requirements and eligibility for continued Federal financial participation (FFP) under the Federal MFCU grant program, as part of the annual recertification process for each MFCU. The collection would also allow OIG to assess performance and trends in Medicaid fraud and patient abuse and neglect across all MFCUs.

In order to evaluate fairly whether this information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section are to be considered. We explicitly seek, and will consider, public comment on our assumptions as they relate to the PRA requirements summarized in this section. Comments on these information collection activities should be sent to the following address within 60 days following the **Federal Register** publication of this proposed rule: OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street NW., Washington, DC 20053.

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List of Subjects

42 CFR Part 455—Program integrity: Medicaid.

Fraud, Grant programs-health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirement.

42 CFR Part 1007—State Medicaid fraud control units.

Administrative practice and procedure, Fraud, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General (OIG) respectively, propose to amend 42 CFR part 455 and 1007 as follows:

CHAPTER IV—CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. The Authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 455.21 is amended by adding paragraph (c) to read as follows:

§ 455.21 Cooperation with State Medicaid fraud control units.

* * * * *

(c) The agency must enter into a written agreement with the unit under which—

(1) The agency will agree to comply with all requirements of § 455.21(a);

(2) The unit will agree to comply with the requirements of 42 CFR 1007.11(c); and

(3) The agency and the unit will agree to—

(i) Establish a practice of regular meetings or communication between the two entities;

(ii) Establish a set of procedures for how they will cooperate and coordinate their efforts; and

(iii) Establish procedures for 42 CFR 1007.9(e) through 1007.9(h).

(iv) Review and, as necessary, update the agreement no less frequently than every 5 years to ensure that the agreement reflects current law and practice.

CHAPTER V—OFFICE OF INSPECTOR GENERAL–HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 3. Part 1007 is revised to read as follows:

PART 1007—STATE MEDICAID FRAUD CONTROL UNITS

Subpart-A—General Provisions and Definitions

1007.1 Definitions.
1007.3 What is the statutory basis for and organization of this rule?

Subpart-B—Requirements for Certification

1007.5 What are the single identifiable entity requirements for a Unit?
1007.7 What are the prosecutorial authority requirements for a Unit?

§ 1007.9 What is the relationship to the Medicaid agency, and what should be included in the agreement with the agency?

1007.11 What are the functions and responsibilities of a Unit?
1007.13 What are the staffing requirements of a Unit?
1007.15 How does a State apply to establish a Unit and how is a Unit initially certified?
1007.17 How is a Unit recertified annually?

Subpart-C—Federal Financial Participation

1007.19 What is the Federal financial participation (FFP) rate and what costs are eligible for FFP?
1007.20 Under what circumstances is data mining permissible?
1007.21 What is the procedure for disallowance of claims for FFP?

Subpart-D—Other Provisions

1007.23 What other HHS regulations apply to a Unit?

Authority: 42 U.S.C. 1302, 1396a(a)(61), 1396b(a)(6), 1396b(b)(3) and 1396b(q).

Subpart-A—General Provisions and Definitions

§ 1007.1 Definitions.

As used in this part, unless otherwise indicated by the context:

Abuse of patients means any act that constitutes abuse of a patient under applicable criminal State law, including the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or financial harm, pain or mental anguish.

Board and care facility means a residential setting that receives payment (regardless of whether such payment is made under Title XIX of the Social Security Act) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

(1) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant. (2) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

Data mining means the practice of electronically sorting Medicaid or other relevant data, including, but not limited to, the use of statistical models and intelligent technologies, to uncover patterns and relationships within that data to identify aberrant utilization, billing, or other practices that are potentially fraudulent.

Director means a professional employee of the Unit who supervises all Unit employees, either directly or through other MFCU managers.

Exclusive effort means that professional Unit employees, except as otherwise permitted in § 1007.13, dedicate their efforts "exclusively" to the functions and responsibilities of a Unit as described in this part. Exclusive effort requires that duty with the Unit be intended to last for at least 1 year and includes an arrangement in which an employee is on detail or assignment from another government agency, but only if the detail or arrangement is intended to last for at least 1 year.

Fraud means any act that constitutes criminal or civil fraud under applicable State law. It includes a deception, concealment of a material fact, or misrepresentation made by a person intentionally, in deliberate ignorance of the truth, or in reckless disregard of the truth.

Full-time employee means an employee of the Unit who has full-time status as defined by the State.

Health care facility means a provider that receives payments under Medicaid and furnishes food, shelter, and some treatment or services to four or more persons unrelated to the proprietor in an inpatient setting.

Misappropriation of patient funds means the wrongful taking or use, as defined under applicable State law, of funds or property of a patient residing in a health care facility or board and care facility.

Neglect of patients means any act that constitutes abuse of a patient under applicable criminal State law, including the willful failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

Part-time employee means an employee of the Unit who has part-time status as defined by the State.

Professional employee means an investigator, attorney, or auditor.

Program abuse means provider practices that fall short of acts which constitute civil or criminal fraud under applicable Federal and State law, including those that are inconsistent with sound fiscal, business, or medical practices. Program abuse may result in an unnecessary cost to the Medicaid program, inappropriate charges to beneficiaries or in reimbursement for services that are not medically necessary.

Provider means an individual or entity that furnishes items or services for which payment is claimed under Medicaid, or an individual or entity that is required to enroll in a State Medicaid program, such as an ordering or referring physician.

Unit means the State Medicaid Fraud Control Unit.

§ 1007.3 What is the statutory basis for and organization of this rule?

(a) *Statutory basis*. This part codifies sections 1903(a)(6) and 1903(b)(3) of the Social Security Act (the Act), which establish the amounts and conditions of Federal matching payments for expenditures incurred in establishing and operating a State MFCU. This part also implements section 1903(q) of the Act, which establishes the basic requirements and standards that Units must meet to demonstrate that they are effectively carrying out the functions of the State MFCU in order to be certified by OIG as eligible for FFP under title XIX. Section 1902(a)(61) of the Act requires a State to provide in its Medicaid State plan that it operates a MFCU that effectively carries out the functions and requirements described in this part, as determined in accordance with standards established by OIG, unless the State demonstrates that a Unit would not be cost-effective because of minimal Medicaid fraud in the covered services under the plan and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a Unit. CMS retains the authority to determine a State's compliance with Medicaid State plan requirements in accordance with Section 1902(a) of the Act.

(b) *Organization of the rule.* Subpart A of this part defines terms used in this part and sets forth the statutory basis and organization of this part. Subpart B specifies the certification requirements that a Unit must meet to be eligible for FFP, including requirements for applying and reapplying for certification. Subpart C specifies FFP rates, costs eligible and not eligible for FFP, and FFP disallowance procedures. Subpart D specifies other HHS regulations applicable to the MFCU grants.

Subpart B—Requirements for Certification

§ 1007.5 What are the single identifiable entity requirements for a Unit?

(a) A Unit must be a single identifiable entity of the State government.

(b) To be considered a single identifiable entity of the State government the Unit must:

(1) Be a single organization reporting to the Unit director;

(2) Operate under a budget that is separate from that of its parent agency; and

(3) Have the headquarters office and any field offices each in their own contiguous space.

§ 1007.7 What are the prosecutorial authority requirements of a Unit?

A Unit must be organized according to one of the following three options related to a Unit's prosecutorial authority:

(a) The Unit is in the office of the State Attorney General or another department of State government that has Statewide authority to prosecute individuals for violations of criminal laws with respect to fraud in the provision or administration of medical assistance under a State plan implementing title XIX of the Act;

(b) If there is no State agency with Statewide authority and capability for criminal fraud or patient abuse and neglect prosecutions, the Unit has established formal written procedures ensuring that the Unit refers suspected cases of criminal fraud in the State Medicaid program or of patient abuse and neglect to the appropriate prosecuting authority or authorities, and provides assistance and coordination to such authority or authorities in the prosecution of such cases; or

(c) The Unit has a formal working relationship with the office of the State Attorney General, or another office with Statewide prosecutorial authority, and has formal written procedures for referring to the Attorney General or other office suspected criminal violations and for effective coordination of the activities of both entities relating to the detection, investigation and prosecution of those violations relating to the State Medicaid program. Under this working relationship, the office of the State Attorney General, or other office, must agree to assume responsibility for prosecuting alleged criminal violations referred to it by the Unit. However, if the Attorney General finds that another prosecuting authority has the demonstrated capacity, experience and willingness to prosecute an alleged violation, he or she may refer a case to that prosecuting authority, so long as the Attorney General's Office maintains oversight responsibility for the prosecution and for coordination between the Unit and the prosecuting authority.

§ 1007.9 What is the relationship to the Medicaid agency, and what should be included in the agreement with the agency?

(a) The Unit must be separate and distinct from the Medicaid agency.

(b) No official of the Medicaid agency will have authority to review the activities of the Unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.

(c) The Unit will not receive funds paid under this part either from or through the Medicaid agency.

(d) The Unit must enter into a written agreement with the Medicaid agency under which:

(1) The Medicaid agency will agree to comply with all requirements of § 455.21(a) of this title;

(2) The Unit will agree to comply with the requirements of § 1007.11(c) of this title; and

(3) The Medicaid agency and the Unit will agree to:

(i) Establish a practice of regular meetings or communication between the two entities;

(ii) Establish procedures for how they will coordinate their efforts; and

(iii) Establish procedures for §§ 1007.9(e) through 1007.9(h).

(iv) Review and, if needed, update the agreement no less frequently than every 5 years to ensure that the agreement reflects current law and practice.

(e)(1) The Unit may refer any provider with respect to which there is pending an investigation of a credible allegation of fraud under the Medicaid program to the Medicaid agency for payment suspension in whole or part under § 455.23 of this title.

(2) Referrals may be brief, but must be in writing and include sufficient information to allow the Medicaid agency to identify the provider and to explain the credible allegations forming the grounds for the payment suspension.

(f) Any request by the Unit to the Medicaid agency to delay notification to the provider of a payment suspension under § 455.23 of this title must be made promptly in writing.

(g) The Unit should reach a decision on whether to accept a case referred by the Medicaid agency in a timely fashion. When the Unit accepts or declines a case referred by the Medicaid agency, the Unit promptly notifies the Medicaid agency in writing of the acceptance or declination of the case.

(h) Upon request from the Medicaid agency on a quarterly basis under § 455.23(d)(3)(ii), the Unit will certify that any matter accepted on the basis of a referral continues to be under investigation thus warranting continuation of the payment suspension.

§ 1007.11 What are the functions and responsibilities of a Unit?

(a) The Unit must conduct a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to the following:

(1) Fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers.

(2) Fraud in any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(f)(1)of the Act), if the Unit obtains the written approval of the Inspector General of the relevant agency and the suspected fraud or violation of law in such case or investigation is primarily related to the State Medicaid program.

(3) Such State laws include criminal statutes as well as civil false claims statutes or other civil authorities.

(b)(1) The Unit must also review complaints alleging abuse or neglect of patients, including complaints of the misappropriation of a patient's funds, in health care facilities receiving payments under Medicaid.

(2) At the option of the Unit, it may review complaints of abuse or neglect of patients, including misappropriation of patient funds, residing in board and care facilities, regardless of whether payment to such facilities is made under Medicaid.

(3) If the initial review of the complaint indicates substantial potential for criminal prosecution, the Unit must investigate the complaint or refer it to an appropriate criminal investigative or prosecutorial authority.

(4) If the initial review does not indicate a substantial potential for criminal prosecution, the Unit must, if appropriate, refer the complaint to the proper Federal, State, or local agency.

(c) If the Unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider, the Unit must either recover such overpayment as part of its resolution of a fraud case or refer the matter to the proper State agency for collection.

(d) Where a prosecuting authority other than the Unit is to assume responsibility for the prosecution of a case investigated by the Unit, the Unit must ensure that those responsible for the prosecutorial decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and must provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(e)(1) The Unit, if requested, will make available to OIG investigators and attorneys, other Federal investigators, and prosecutors, all information in the Unit's possession concerning investigations or prosecutions conducted by the Unit.

(2) The Unit will coordinate with OIG investigators and attorneys, other Federal investigators, and prosecutors on any Unit cases involving the same suspects or allegations.

(3) The Unit will establish a practice of regular Unit meetings or communication with OIG investigators and Federal prosecutors.

(4) When the Unit lacks the authority or resources to pursue a case, including for allegations of Medicare fraud and for civil false claims actions in a State without a civil false claims act or other State authority, the Unit will make appropriate referrals to OIG investigators and attorneys or other Federal investigators or prosecutors.

(5) The Unit will establish written procedures for items described in paragraphs (e)(1) through (4) of this section.

(f) The Unit will guard the privacy rights of all beneficiaries and other individuals whose data is under the Unit's control and will provide adequate safeguards to protect sensitive information and data under the Unit's control.

(g)(1) The Unit will transmit to OIG pertinent information on all convictions, including charging documents, plea agreements, and sentencing orders, for purposes of program exclusion under section 1128 of the Act.

(2) Convictions include those obtained either by Unit prosecutors or non-Unit prosecutors in any case investigated by the Unit.

(3) Such information will be transmitted to OIG within 30 days of sentencing, or as soon as practicable if the Unit encounters delays in receiving the necessary information from the sentencing court.

§ 1007.13 What are the staffing requirements of a Unit?

(a) The Unit will employ sufficient professional, administrative, and support staff to carry out its duties and responsibilities in an effective and efficient manner.

(b) The Unit must employ individuals from each of the following categories of professional employees, whose exclusive effort, as defined in § 1007.1, is devoted to the work of the Unit:

(1) One or more attorneys capable of prosecuting health care fraud or criminal cases and capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors;

(2) One or more experienced auditors capable of reviewing financial records and advising or assisting in the investigation of alleged fraud and patient abuse and neglect; and

(3) One or more investigators, including a senior investigator who is capable of supervising and directing the investigative activities of the Unit.

(c) The Unit must employ a director, as defined in § 1007.1, who supervises all Unit employees.

(d) Professional employees:

(1) Must devote their exclusive effort to the work of the Unit, as defined in § 1007.1 and except as provided in paragraphs(d)(2) and (d)(3) of this section;

(2) May be employed outside the Unit during non-duty hours, only if the employee is not:

(i) Employed with a State agency (other than the Unit itself) or its contractors; or

(ii) Employed with an entity whose mission poses a conflict of interest with Unit function and duties;

(3) May perform non-MFCU assignments for the State government only to the extent that such duties are limited in duration; and

(4) Must be under the direction and supervision of the Unit director.

(e) The Unit may employ administrative and support staff, such as paralegals, information technology personnel, interns, and secretaries, who may be full-time or part-time employees and must report to the director or other Unit supervisor.

(f) The Unit will employ, or have available to it, individuals who are knowledgeable about the provision of medical assistance under title XIX and about the operations of health care providers.

(g)(1) The Unit may employ, or have available through consultant agreements or other contractual arrangements, individuals who have forensic or other specialized skills that support the investigation and prosecution of cases.

(2) The Unit may not, through consultant agreements or other contractual arrangements, rely on individuals not employed directly by the Unit for the investigation or prosecution of cases.

(h) The Unit must provide training for its professional employees for the purpose of establishing and maintaining proficiency in Medicaid fraud and patient abuse and neglect matters.

§ 1007.15 How does a State apply to establish a Unit, and how is a Unit initially certified?

(a) *Initial application.* In order to demonstrate that it meets the requirements for certification, the State or territory must submit to OIG, an application approved by the Governor or chief executive, containing the following:

(1) A description of the applicant's organization, structure, and location within State government, and a statement of whether it seeks certification under § 1007.7 (a), (b), or (c);

(2) A statement from the State Attorney General that the applicant has authority to carry out the functions and responsibilities set forth in Subpart B. If the applicant seeks certification under § 1007.7(b), the statement must also specify either that—

(i) There is no State agency with the authority to exercise Statewide prosecuting authority for the violations with which the Unit is concerned, or

(ii) Although the State Attorney General may have common law authority for Statewide criminal prosecutions, he or she has not exercised that authority;

(3) A copy of whatever memorandum of agreement, regulation, or other document sets forth the formal procedures required under § 1007.7(b), or the formal working relationship and procedures required under § 1007.7(c);

(4) A copy of the agreement with the Medicaid agency required under § 1007.9 and § 455.21(c);

(5) A statement of the procedures to be followed in carrying out the functions and responsibilities of this part;

(6) A proposed budget for the 12-month period for which certification is sought; and

(7) Current and projected staffing, including the names, education, and experience of all senior professional employees already employed and job descriptions, with minimum qualifications, for all professional positions.

(b) *Basis for, and notification of certification.*

(1) OIG will make a determination as to whether the initial application under paragraph (a) meets the requirements of §§ 1007.5 through 1007.13 and whether a Unit will be effective in using its resources in investigating Medicaid fraud and patient abuse and neglect.

(2) OIG will certify a Unit only if OIG specifically approves the applicant's formal written procedures under § 1007.7 (b) or (c), if either of those provisions is applicable.

(3) If the application is not approved, the applicant may submit a revised application at any time.

(4) OIG will certify a Unit that meets the requirements of this Subpart B for 12 months.

§ 1007.17 How is a Unit recertified annually?

(a) *Information required annually for recertification.* To continue receiving payments under this part, a Unit must submit to OIG:

(1) *Reapplication for recertification.* Reapplication is due at least 60 days prior to the expiration of the 12-month certification period. A reapplication must include:

(i) A brief narrative that evaluates the Unit's performance, describes any specific problems it has had in connection with the procedures and agreements required under this part, and discusses any other matters that have impaired its effectiveness. The narrative should include any extended investigative authority approvals obtained pursuant to § 1007.11(a)(2).

(ii) For those MFCUs approved to conduct data mining under § 1007.20, all costs expended by the MFCU attributed to data mining activities; the amount of staff time devoted to data mining activities; the number of cases generated from those activities; the outcome and status of those cases, including the expected and actual monetary recoveries (both Federal and non-Federal share); and any other relevant indicia of return on investment from such activities.

(iii) Information requested by OIG to assess compliance with this part and adherence to MFCU performance standards, including any significant changes in the information or documentation provided to OIG in the previous reporting period.

(2) *Statistical Reporting.* By November 30 of each year, the Unit will submit statistical reporting for the Federal fiscal year that ended on the prior September 30 containing the following statistics—

(i) Unit staffing. The number of Unit employees, categorized by attorneys, investigators, auditors, and other employees on board; and total number of approved Unit positions;

(ii) Caseload. The number of open, new, and closed cases categorized by type of case; the number of open criminal and civil cases categorized by type of provider;

(iii) Criminal case outcomes. The number of criminal convictions and indictments categorized by type of case and by type of provider; the number of acquittals, dismissals, referrals for prosecution, sentences, and other non-monetary penalties categorized by type of case; the amount of total ordered criminal recoveries categorized by type of provider; the amount of ordered Medicaid restitution, fines ordered, investigative costs ordered, and other monetary payment ordered categorized by type of case

(iv) Civil case outcomes. The number of civil settlements and judgments and recoveries categorized by type of provider; the number of global (coordinated among a group of States) civil settlements and successful judgments; the amount of global civil recoveries to the Medicaid program; and the amount of other global civil monetary recoveries; the number of other civil cases opened, filed, or referred for filing; the number of other civil case settlements and successful judgments; the amount of other civil case recoveries to the Medicaid program; the amount of other monetary recoveries; and the number of other civil cases declined or closed without successful settlement or judgment;

(v) Collections. The monies actually collected on criminal and civil cases categorized by type of case; and

(vi) Referrals. The number of referrals received categorized by source of referral and type of case; the number of cases opened categorized by source of referral and type of case; and the number of referrals made to other agencies categorized by type of case.

(b) *Other information reviewed for recertification.* In addition to reviewing information required at § 1007.17(a), OIG will review, as appropriate, the following information when considering recertification of a Unit:

(1) Information obtained through onsite reviews; and

(2) Other information OIG deems necessary or warranted.

(c) *Basis for recertification.* In reviewing the information described at sections § 1007.17(a) and (b), OIG will evaluate whether the Unit has demonstrated that it effectively carries out the functions and requirements described in section 1903(q) of the Act as implemented by this Part. In making that determination, OIG will take into consideration the following factors:

(1) Unit's compliance with this part and other Federal regulations, including those specified in § 1007.23;

(2) Unit's compliance with OIG policy transmittals;

(3) Unit's adherence to MFCU performance standards as published in the **Federal Register**;

(4) Unit's effectiveness in using its resources in investigating cases of possible fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan, and in prosecuting cases or cooperating with the prosecuting authorities; and

(5) Unit's effectiveness in using its resources in reviewing and investigating, referring for investigation or prosecution, or for criminally prosecuting complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and, at the Unit's option, in board and care facilities.

(d) *Notification.* OIG will notify the Unit by the Unit's recertification date of approval or denial of the recertification reapplication.

(1) Approval subject to conditions. OIG may impose special conditions or restrictions and may require corrective action, as provided in 45 CFR 75.207, before approving a reapplication for recertification.

(2) If the reapplication is denied, OIG will provide a written explanation of the findings on which the denial was based.

(e) *Reconsideration of denial of recertification.*

(1) A Unit may request that OIG reconsider a decision to deny recertification by providing written information contesting the findings on which the denial was based.

(2) Within 30 days of receipt of the request for reconsideration, OIG will provide a final decision in writing, explaining its basis for approving or denying the reconsideration of recertification.

Subpart C—Federal Financial Participation

§ 1007.19 What is the FFP rate and what costs are eligible for FFP?

(a) *Rate of FFP.* (1) Subject to the limitation of this section, the Secretary must reimburse each State by an amount equal to 90 percent of the allowable costs incurred by a certified Unit during the first 12 quarters of operation that are attributable to carrying out its functions and responsibilities under this part.

(2) Beginning with the 13th quarter of operation, the Secretary must reimburse 75 percent of costs incurred by a certified Unit. Each quarter of operation must be counted in determining when the Unit has accumulated 12 quarters of operation and is, therefore, no longer eligible for a 90 percent matching rate. Quarters of operation do not have to be consecutive to accumulate.

(b) *Retroactive certification.* OIG may grant certification retroactive to the date on which the Unit first met all the requirements of the statute and of this part. For any quarter with respect to which the Unit is certified, the Secretary will provide reimbursement for the entire quarter.

(c) *Total amount of FFP.* FFP for any quarter must not exceed the higher of $125,000 or one-quarter of 1 percent of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State Medicaid program.

(d) *Costs eligible for FFP.* (1) FFP is allowable under this part for the expenditures attributable to the establishment and operation of the Unit, including the cost of training personnel employed by the Unit and efforts to increase referrals to the Unit through program outreach. Reimbursement is allowable only for costs attributable to the specific responsibilities and functions set forth in this part and if the Unit has been certified and recertified by OIG.

(2) Establishment costs are limited to clearly identifiable costs of personnel that meet the requirements of § 1007.13 of this part.

(e) *Costs not eligible for FFP.* FFP is not allowable under this part for expenditures attributable to—

(1) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud, as described in § 1007.11(a) of this part;

(2) Routine verification with beneficiaries of whether services billed by providers were actually received, or, except as provided in § 1007.20, efforts to identify situations in which a question of fraud may exist by the screening of claims and analysis of patterns and practice that involve data mining as defined in § 1007.1.

(3) The routine notification of providers that fraudulent claims may be punished under Federal or State law;

(4) The performance of any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers by a person who does not meet the professional employee requirements in § 1007.13(d);

(5) The investigation or prosecution of cases involving a beneficiary's eligibility for benefits, unless the suspected fraud also involves conspiracy with a provider;

(6) Any payment, direct or indirect, from the Unit to the Medicaid agency, other than payments for the salaries of employees on detail to the Unit; or

(7) Temporary duties performed by professional employees that are not required functions and responsibilities of the Unit, as described at § 1007.13(d)(3).

§ 1007.20 Under what circumstances is data mining permissible?

(a) Notwithstanding § 1007.19(e)(2), a MFCU may engage in data mining as defined in this part and receive FFP only under the following conditions:

(1) The MFCU identifies the methods of coordination between the MFCU and Medicaid agency, the individuals serving as primary points of contact for data mining, as well as the contact information, title, and office of such individuals;

(2) MFCU employees engaged in data mining receive specialized training in data mining techniques;

(3) The MFCU describes how it will comply with paragraphs(a)(1) and (2) of this section as part of the agreement required by § 1007.9(d); and

(4) OIG, in consultation with CMS, approves in advance the provisions of the agreement as defined in paragraph (a)(3)of this section.

(i) OIG will act on a request from a MFCU for review and approval of the agreement within 90 days after receipt of a written request, or the request shall be considered approved if OIG fails to respond within 90 days after receipt of the written request.

(ii) If OIG requests additional information in writing, the 90-day period for OIG action on the request begins on the day OIG receives the information from the MFCU.

(iii) The approval is for 3 years.

(iv) A MFCU may request renewal of its data mining approval for additional 3-year periods by submitting a written request for renewal to OIG, along with an updated agreement with the Medicaid agency.

§ 1007.21 What is the procedure for disallowance of claims for FFP?

(a) *Notice of disallowance.* When OIG determines that a Unit's claim or portion of a claim for FFP is not allowable, OIG shall send to the Unit notification that meets the requirements listed at 42 CFR 430.42(a).

(b) *Reconsideration of disallowance.* (1) The Principal Deputy Inspector General will reconsider MFCU disallowance determinations made by OIG.

(2) To request a reconsideration from the Principal Deputy Inspector General, the Unit must follow the requirements in 42 CFR 430.42(b)(2) and submit all required information to the Principal Deputy Inspector General. Copies should be sent via registered or certified mail to the Principal Deputy Inspector General.

(3) The Unit may request to retain FFP during the reconsideration of the disallowance under section 1116(e) of the Act, in accordance with 42 CFR 433.38.

(4) The Unit is not required to request reconsideration before seeking review from the Departmental Appeals Board.

(5) The Unit may also seek reconsideration, and following the reconsideration decision, request a review from the Departmental Appeals Board.

(6) If the Unit elects reconsideration, the reconsideration process must be completed or withdrawn before requesting review by the Departmental Appeals Board.

(c) *Procedures for reconsideration of a disallowance.* (1) Within 60 days after receipt of the disallowance letter, the Unit shall, in accordance with (b)(2) of this section, submit in writing to the Principal Deputy Inspector General any relevant evidence, documentation, or explanation.

(2) After consideration of the policies and factual matters pertinent to the issues in question, the Principal Deputy Inspector General shall, within 60 days from the date of receipt of the request for reconsideration, issue a written decision or a request for additional information as described in paragraph (c)(3) of this section.

(3) At the Principal Deputy Inspector General's option, OIG may request from the Unit any additional information or documents necessary to make a decision. The request for additional information must be sent via registered or certified mail to establish the date the request was sent by OIG and received by the Unit.

(4) Within 30 days after receipt of the request for additional information, the Unit must submit to the Principal Deputy Inspector General all requested documents and materials.

(i) If the Principal Deputy Inspector General finds that the materials are not in readily reviewable form or that additional information is needed, he or she shall notify the Unit via registered or certified mail that it has 15 business days from the date of receipt of the notice to submit the readily reviewable or additional materials.

(ii) If the Unit does not provide the necessary materials within 15 business days from the date of receipt of such notice, the Principal Deputy Inspector General shall affirm the disallowance in a final reconsideration decision issued within 15 days from the due date of additional information from the Unit.

(5) If additional documentation is provided in readily reviewable form under paragraph (c)(4) of this section, the Principal Deputy Inspector General shall issue a written decision, within 60 days from the due date of such information.

(6) The final written decision shall constitute final OIG administrative action on the reconsideration and shall be (within 15 business days of the decision) mailed to the Unit via registered or certified mail to establish the date the reconsideration decision was received by the Unit.

(7) If the Principal Deputy Inspector General does not issue a decision within 60 days from the date of receipt of the request for reconsideration or the date of receipt of the requested additional information, the disallowance shall be deemed to be affirmed.

(8) No section of this regulation shall be interpreted as waiving OIG's right to assert any provision or exemption under the Freedom of Information Act.

(d) *Withdrawal of a request for reconsideration of a disallowance.* (1) A Unit may withdraw the request for reconsideration at any time before the notice of the reconsideration decision is received by the Unit without affecting its right to submit a notice of appeal to the Departmental Appeals Board. The request for withdrawal must be in writing and sent to the Principal Deputy Inspector General via registered or certified mail.

(2) Within 60 days after OIG's receipt of a Unit's withdrawal request, a Unit may, in accordance with (f)(2) of this section, submit a notice of appeal to the Departmental Appeals Board.

(e) *Implementation of decisions for reconsideration of a disallowance.* (1) After undertaking a reconsideration, the Principal Deputy Inspector General may affirm, reverse, or revise the disallowance and shall issue a final written reconsideration decision to the Unit in accordance with 42 CFR 430.42(c)(5) and (c)(3) of this section.

(2) If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant action will be made in the amount of such increase or decrease.

(3) Within 60 days after receipt of a reconsideration decision from OIG, a Unit may, in accordance with paragraph (f) of this section, submit a notice of appeal to the Departmental Appeals Board.

(f) *Appeal of disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XIX, including disallowances issued by OIG to the Units.

(2) A Unit that wishes to appeal a disallowance to the Departmental Appeals Board must follow the requirements in 42 CFR 430.42(f)(2).

(3) The appeals procedures are those set forth in 45 CFR part 16 for Medicaid and for many other programs, including the MFCUs, administered by the Department.

(4) The Departmental Appeals Board may affirm the disallowance, reverse the disallowance, modify the disallowance, or remand the disallowance to OIG for further consideration.

(5) The Departmental Appeals Board will issue a final written decision to the Unit consistent with 45 CFR part 16.

(6) If the appeal decision requires an adjustment of FFP, either upward or downward, a subsequent grant action will be made in the amount of increase or decrease.

Subpart-D—Other Provisions

§ 1007.23 What other HHS regulations apply to a Unit?

The following regulations from 45 CFR subtitle A apply to grants under this part:

Part 16—Procedures of the Departmental Grant Appeals Board;

Part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards;

Part 80—Nondiscrimination under Programs Receiving Federal Assistance through HHS, Effectuation of title VI of the Civil Rights Act of 1964;

Part 81—Practice and Procedure for Hearings under 45 CFR part 80;

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance;

Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

Dated: June 16, 2016.

Daniel R. Levinson,

Inspector General.

Approved: June 23, 2016.

Sylvia M. Burwell,

Secretary.

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[No. DOI–2016–0006; 16XD4523WS DS10200000 DWSN00000.000000 WBS DP10202]

RIN 1093–AA21

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking would revise the regulations that the Department of the Interior (Department) follows in processing records under the Freedom of Information Act in part to comply with the FOIA Improvement Act of 2016. The revisions would clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public.

DATES: Comments on the rulemaking must be submitted on or before November 21, 2016.

ADDRESSES: You may submit comments on the rulemaking by either of the methods listed below. Please use Regulation Identifier Number 1093–AA21 in your message.

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the ''Search'' bar, enter DOI–2016–0006 (the docket number for this rule) and then click ''Search.'' Follow the instructions on the Web site for submitting comments.

2. *U.S. mail, courier, or hand delivery:* Executive Secretariat—FOIA regulations, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Cindy Cafaro, Office of Executive Secretariat and Regulatory Affairs, 202–208–5342.

SUPPLEMENTARY INFORMATION:

I. Why We're Publishing This Proposed Rule and What It Does

In late 2012, the Department published a final rule updating and replacing the Department's previous Freedom of Information Act (FOIA) regulations. In early 2016, the Department updated that final rule, primarily to authorize the Office of Inspector General (OIG) to process their own FOIA appeals. On June 30, 2016, the FOIA Improvement Act of 2016, Pub. L. 114–185, 130 Stat. 538 (the Act) was enacted. The Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions, and the Department is making changes to its regulations accordingly. Finally, the Department has received feedback from its FOIA practitioners and requesters and identified areas where it would be possible to further update, clarify, and streamline the language of some procedural provisions. Therefore, the Department is proposing to make the following changes:

- Section 2.4(e) would be amended to provide additional guidance on how bureaus handle misdirected requests.
- Section 2.15 would be amended to bring attention to the Department's existing FOIA Request Tracking Tool (*https://foia.doi.gov/requeststatus*).
- Section 2.19 would be amended to bring further attention to the services provided by the Office of Government Information Services (OGIS), in accordance with the provisions of the Act.
- Section 2.21 would be amended to reflect that the OGIS would be defined earlier in the regulations than it previously had been.
- Section 2.24 would be amended to require a foreseeable harm analysis, in accordance with the provisions of the Act, and to require bureaus to provide an explanation to the requester when an estimate of the volume of any records withheld in full or in part is not provided.

- Section 2.37(f) would be amended to reflect the provisions of the Act.
- Section 2.39 would be amended to remove what would be superfluous language, after the changes to section 2.37(f).
- Section 2.58 would be amended to provide more time for requesters to appeal, in accordance with the provisions of the Act.

II. Compliance With Laws and Executive Orders

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O) 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rulemaking is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rulemaking does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rulemaking does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rulemaking does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A federalism summary impact statement is not required.

7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rulemaking does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This rulemaking does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

9. Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), is not required. Pursuant to 43 CFR 46.205(b) and 43 CFR 46.210(i), the Department of the Interior NEPA implementing procedures exclude from preparation of an environmental assessment or impact statement "[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature. . . ." None of the extraordinary circumstances listed in 43 CFR 46.215 exists for this rulemaking. Accordingly, this proposed rule is categorically excluded from environmental analysis under 43 CFR 46.210(i).

11. Effects on the Energy Supply (E.O. 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rulemaking will not have a significant effect on the nation's energy supply, distribution, or use.

12. Clarity of This Proposed Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

13. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 2

Freedom of information.

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management, and Budget.

For the reasons stated in the preamble, the Department of the Interior proposes to amend part 2 of title 43 of the Code of Federal Regulations as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

Subpart B—How to Make a Request

■ 2. In § 2.4, revise paragraph (e) to read as follows:

§ 2.4 Does where you send your request affect its processing?

* * * * *

(e) If your request is received by a bureau that believes it is not the appropriate bureau to process your request, the bureau that received your request will attempt to contact you (if possible, via telephone or email) to confirm that you deliberately sent your request to that bureau for processing. If you do not confirm this, the bureau will deem your request misdirected and route the misdirected request to the appropriate bureau to respond under the basic time limit outlined in § 2.17 of this part.

* * * * *

Subpart D—Timing of Responses to Requests

§ 2.15 [Amended]

■ 3. In § 2.15, add paragraph (g) to read as follows:

§ 2.15 What is multitrack processing and how does it affect your request?

* * * * *

(g) You may track the status of your request, including its estimated processing completion date, at *https://foia.doi.gov/requeststatus/.*

§ 2.19 [Amended]

■ 4. In § 2.19(b)(2), add the words ", and notify you of your right to seek dispute resolution from the Office of Government Information Services (OGIS)" after the words "you and the bureau".

Subpart E—Responses to Requests

§ 2.21 [Amended]

■ 5. In § 2.21(a), the second sentence, remove the words "Office of Government Information Services (OGIS)" and add in their place "the OGIS".

§ 2.24 [Amended]

■ 6. Amend § 2.24 by:

a. In paragraph (b)(3), adding the words ", along with a statement that the bureau reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law" after the words "or in part"; and

b. In paragraph (b)(4), adding the word "including" after the word "unless" and adding the words "and the bureau explains this harm to you" after the words "withhold the records".

Subpart G—Fees

§ 2.37 [Amended]

■ 7. In § 2.37, revise paragraph (f) to read as follows:

§ 2.37 What general principles govern fees?

* * * * *

(f) If the bureau does not comply with any time limit in the FOIA:

(1) Except as provided in paragraph (f)(2) of this section, the bureau cannot assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

(2)(i) If the bureau has determined that unusual circumstances apply (as the term is defined in § 2.70 of this part) and the bureau provided you a timely written notice to extend the basic time limit in accordance with § 2.19 of this part, the noncompliance is excused for an additional 10 calendar days. If the bureau fails to comply with the extended time limit, the bureau may not assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

(ii) If the bureau has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the noncompliance is excused if, in accordance with § 2.19 of this part, the bureau has provided you a timely written notice and has discussed with you via written mail, email, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(iii) If a court has determined that exceptional circumstances exist (as that term is defined in § 2.70 of this part), the noncompliance is excused for the length of time provided by the court order.

* * * * *

§ 2.39 [Amended]

■ 8. In § 2.39, remove the paragraph (a) designation and remove paragraph (b).

Subpart H—Administrative Appeals

§ 2.58 [Amended]

■ 9. In § 2.58(a) and (b), remove the number "30" and add in its place the number "90".

[FR Doc. 2016–22166 Filed 9–19–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 9

[Docket ID: FEMA–2015–0006]

RIN 1660–AA85

Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; notice of data availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this Notice of Data Availability (NODA) in connection with the proposed rule titled, "Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard" that was published on August 22, 2016. Through this NODA, FEMA is making available to the public, and soliciting comment on, a draft report, *2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas.* The draft report has been added to the docket for the proposed rule.

DATES: Comments must be received no later than October 21, 2016. Late comments will not be accepted.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2015–0006, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE–1604, 500 C Street SW., Washington, DC 20472–3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. If you submit a comment, identify the agency name and the Docket ID for this rulemaking, indicate the specific section of the document to which each comment applies, and give the reason for each comment.

FOR FURTHER INFORMATION CONTACT: Kristin Fontenot, Director, Office of Environmental Planning and Historic Preservation, Federal Insurance and Mitigation Administration, DHS/FEMA, 400 C Street SW., Suite 313, Washington, DC 20472–3020. Phone: 202–646–2741; Email: *Kristin.Fontenot@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On August 22, 2016, at 81 FR 57402, the Federal Emergency Management Agency (FEMA) proposed to amend its regulations on "Floodplain Management and Protection of Wetlands" and proposed a supplementary policy that would further clarify how FEMA applies the Federal Flood Risk Management Standard. Through this Notice of Data Availability (NODA), FEMA is making available to the public, and soliciting comment on, a draft report, *2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas* that became available after publication of the proposed rule.

As part of the rulemaking process, FEMA included in the docket a Regulatory Evaluation to estimate the potential costs and benefits of the proposed rule. The evaluation accompanying the proposed rule addressed costs associated with elevating and floodproofing FEMA Federally Funded Projects to specified freeboard levels. Cost and benefit estimates were made using *the 2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards* (2008 report), which evaluated the costs and benefits associated with elevating newly constructed residential structures, located in coastal areas.

While the 2008 report was the best available data at the time, it was limited in scope to single-family residential structures. The proposed rule primarily affects non-residential structures owned by local government agencies and private non-profit organizations. The 2008 report is also limited to new construction projects. Most of the projects affected by the proposed rule would be retrofitted structures. The draft report includes data and analysis specific to some of the types of projects most likely to be affected by the proposed rule.

The purpose of this 2016 draft report, which is part of a broader effort related to FEMA's Hazard Mitigation Assistance Program, was to determine if increased freeboard requirements would result in sufficient reductions in damages to be considered cost-effective. The results of this analysis provide some insight into the potential costs and benefits associated with constructing nonresidential and public buildings with higher freeboard requirements. The draft report provides cost and benefit estimates for elevating new construction buildings, as well as the costs and benefits of dry floodproofing both new and existing structures. The Regulatory Evaluation for the proposed rule discussed the differences in potential costs and benefits associated with elevation and floodproofing of new construction and existing buildings. However, because of a lack of data available to FEMA at the time that FEMA published the Regulatory Evaluation, the Evaluation does not quantify these costs separately. Additionally, the draft report includes significant additional discussion of the effects of sea level rise on the benefit-cost ratios of freeboard elevation. FEMA notes for the public's awareness that similar to the 2008 report, the draft report is limited, as riverine areas were not included in the analysis. Moreover, the report is still in draft form and is not peer-reviewed. FEMA welcomes comments on these and other aspects of the draft report. In particular, FEMA requests comments on whether the draft report contains enough information on which the public can base a conclusion on its use to quantify benefits for the proposed rule. For example, the study describes its methodology, outlines its basic assumptions, and provides summary statistics and overall benefit-cost ratios, but it does not show the inputs used for many of its calculations and assumptions.

Because of the above-referenced differences between the 2008 report and the draft report, FEMA welcomes comment on whether it would be more appropriate to use the draft report to estimate the costs and benefits in a future regulatory evaluation of a final rule on this topic. FEMA seeks comments from the public about all aspects of the applicability of this draft report to the rulemaking, including how the data in this draft report may be applied in estimating costs and benefits associated with elevating and floodproofing structures to the proposed freeboard levels in the final rule.

For example, data and analysis from the draft report could be used to estimate the costs and benefits associated with elevating and floodproofing FEMA Federally Funded projects involving nonresidential structures. The draft report includes data and analysis relevant to the following building types in coastal areas: elementary schools, hospitals, police stations, retail stores, and office buildings. The analysis suggests that for the above-referenced building types, evaluated costs could range from $1.03 to $16.29 per square foot, depending on the type of structure.

In addition, FEMA did not monetize the benefits of the freeboard value approach in the Regulatory Evaluation, but FEMA did provide the cost-benefit ratios that the 2008 study described for various freeboard levels. The draft report includes updated cost-benefit ratios that might more accurately depict the benefits of freeboard levels for different types of non-residential structures in coastal areas. FEMA specifically requests comments from the public about the potential applicability of these cost-benefit ratios and whether and how they should be incorporated into the Regulatory Evaluation of a final rule.

List of Subjects in 44 CFR Part 9

Flood plains and Reporting and recordkeeping requirements.

Authority: E.O. 11988 of May 24, 1977. 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24 1977, 3 CFR, 1977 Comp. p. 121; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

Dated: September 14, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–22496 Filed 9–19–16; 8:45 am]

BILLING CODE 9111–66–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2016–0073]

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2014, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2014. The preliminary theft data indicate that the vehicle theft rate for MY/CY 2014 vehicles (1.1525 thefts per thousand vehicles) decreased by 0.32 percent from the theft rate for MY/CY 2013 vehicles (1.1562 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before November 21, 2016.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2016–0073 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., NRM–310, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

NHTSA obtains, from the most reliable source, accurate and timely theft data, and publishes the data for review and comment in accordance with 49 U.S.C. 33104(b)(4). This document reports the preliminary theft data for CY 2014, the most recent calendar year for which data are available.

In calculating the 2014 theft rates, NHTSA followed the same procedures it has used since publication of the MY/CY 1983/1984 theft rate data (50 FR 46669, November 12, 1985). The MY/CY 2014 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2014 vehicles of that line stolen during calendar year 2014 by the total number of vehicles in that line manufactured for MY 2014, as reported to the Environmental Protection Agency (EPA). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from approximately 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The preliminary MY/CY 2014 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in MY/CY 2013 (For 2013 theft data, see 80 FR 72929 November 23, 2015). The preliminary theft rate for MY 2014 passenger vehicles stolen in calendar year 2014 decreased to 1.1525 thefts per thousand vehicles produced, a decrease of 0.32 percent from the rate of 1.1562 thefts per thousand vehicles experienced by MY 2013 vehicles stolen in CY 2013. For MY 2014 vehicles, out of a total of 236 vehicle lines, five lines had a theft rate higher than 3.5826 per thousand vehicles, the median theft rate established for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the five vehicle lines with a theft rate higher than 3.5826, four are passenger car lines, one is a multipurpose passenger vehicle line, and none are light-duty truck lines.

The data presented in this publication reflect a slight decrease in the overall vehicle theft rate for MY/CY 2014 which is consistent with the general theft rate trend over the past several years.

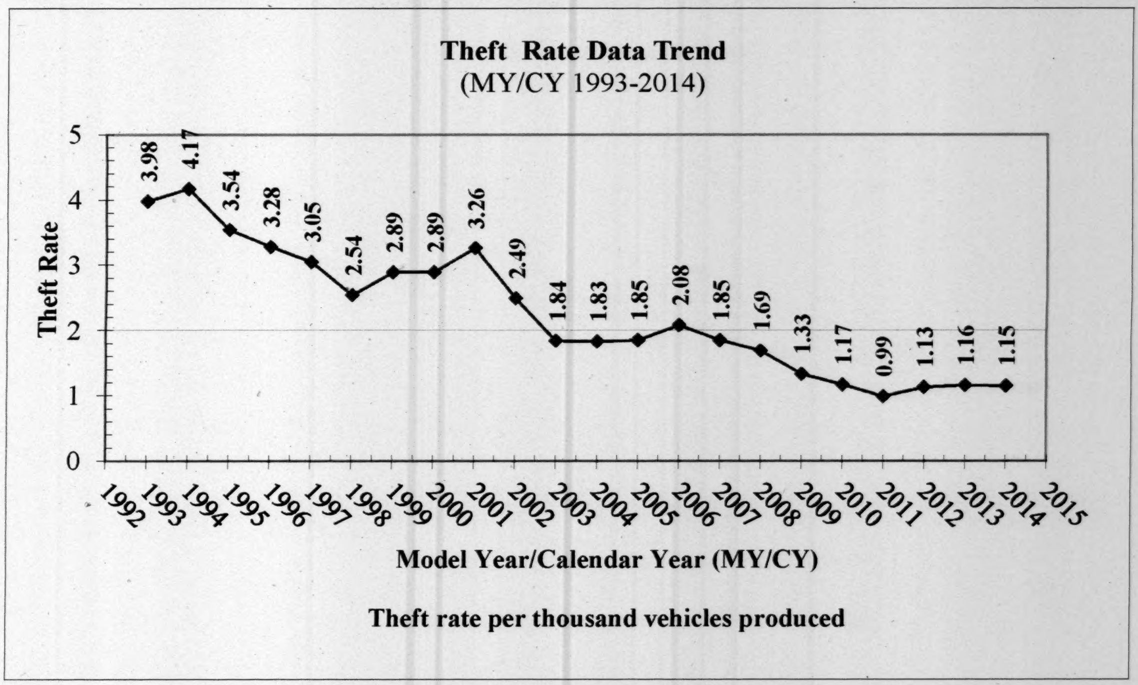

Figure 1: Theft Rate Data Trend (MY/CY 1993-2014)

In Table I, NHTSA has tentatively ranked each of the MY 2014 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given in the **FOR FURTHER INFORMATION CONTACT** section, and two copies from which the purportedly confidential information has been deleted should be submitted to the docket. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

BILLING CODE 4910–59–P

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2014 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2014

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
1	NISSAN	INFINITI Q70	8	1233	6.4882
2	CHRYSLER	DODGE CHARGER	509	106664	4.7720
3	MERCEDES-BENZ	SLS-CLASS	1	223	4.4843
4	NISSAN	INFINITI QX70	16	3776	4.2373
5	CHRYSLER	200	241	59627	4.0418
6	GENERAL MOTORS	CHEVROLET CAPTIVA	175	49045	3.5682
7	TOYOTA	YARIS	86	24524	3.5068
8	GENERAL MOTORS	CHEVROLET IMPALA	623	186586	3.3389
9	GENERAL MOTORS	CHEVROLET CAMARO	295	89358	3.3013
10	CHRYSLER	DODGE CHALLENGER	167	50811	3.2867
11	CHRYSLER	DODGE AVENGER	220	68355	3.2185
12	VOLVO	S80	2	677	2.9542
13	MAZDA	MAZDA2	46	15952	2.8837
14	BMW	7	28	9818	2.8519
15	PORSCHE	PANAMERA	19	6895	2.7556
16	AUDI	AUDI S8	2	744	2.6882
17	KIA	RIO	77	30113	2.5570
18	FORD MOTOR CO	MUSTANG	307	120845	2.5404
19	GENERAL MOTORS	CHEVROLET SS	7	2826	2.4770
20	CHRYSLER	300	167	69884	2.3897
21	NISSAN	VERSA	354	149584	2.3666
22	NISSAN	MAXIMA	176	75620	2.3274
23	NISSAN	ALTIMA	597	281443	2.1212
24	MERCEDES-BENZ	S-CLASS	30	14442	2.0773
25	HYUNDAI	ACCENT	136	66013	2.0602
26	GENERAL MOTORS	CHEVROLET SONIC	171	83217	2.0549
27	BMW	6	15	7346	2.0419
28	NISSAN	INFINITI Q50/Q60	117	57334	2.0407
29	MAZDA	MAZDA5	23	11289	2.0374
30	NISSAN	CUBE	7	3436	2.0373
31	GENERAL MOTORS	CHEVROLET MALIBU	317	156086	2.0309
32	KIA	OPTIMA	222	109954	2.0190
33	KIA	FORTE	174	87825	1.9812

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
34	VOLVO	XC90	4	2076	1.9268
35	GENERAL MOTORS	BUICK REGAL	37	19340	1.9131
36	MITSUBISHI	LANCER	39	21571	1.8080
37	GENERAL MOTORS	BUICK LACROSSE	83	46951	1.7678
38	VOLKSWAGEN	TIGUAN	21	11957	1.7563
39	FERRARI	458	2	1150	1.7391
40	NISSAN	XTERRA	21	12525	1.6766
41	TOYOTA	SCION FR-S	15	9019	1.6632
42	AUDI	AUDI TT	2	1221	1.6380
43	HYUNDAI	SONATA	230	143998	1.5972
44	TOYOTA	CAMRY	741	466187	1.5895
45	AUDI	AUDI S7	2	1281	1.5613
46	BENTLEY MOTORS	FLYING SPUR	2	1329	1.5049
47	FORD MOTOR CO	FIESTA	113	75291	1.5008
48	AUDI	AUDI A8	7	4830	1.4493
49	VOLKSWAGEN	GOLF	10	6914	1.4463
50	HYUNDAI	ELANTRA	218	151185	1.4419
51	GENERAL MOTORS	CHEVROLET SPARK	73	50921	1.4336
52	FORD MOTOR CO	FUSION	446	313391	1.4231
53	GENERAL MOTORS	CADILLAC XTS	43	30282	1.4200
54	AUDI	AUDI A7	10	7046	1.4192
55	VOLKSWAGEN	JETTA	259	182896	1.4161
56	FORD MOTOR CO	TAURUS	82	58103	1.4113
57	TOYOTA	SCION TC	29	20680	1.4023
58	TOYOTA	COROLLA	466	335224	1.3901
59	GENERAL MOTORS	CHEVROLET CRUZE	476	345204	1.3789
60	MITSUBISHI	MIRAGE	29	21149	1.3712
61	FORD MOTOR CO	LINCOLN MKS	15	11132	1.3475
62	CHRYSLER	DODGE JOURNEY	122	91151	1.3384
63	NISSAN	SENTRA	273	211339	1.2918
64	NISSAN	FRONTIER PICKUP	78	62847	1.2411
65	KIA	SORENTO	138	112099	1.2311
66	CHRYSLER	JEEP COMPASS	109	89264	1.2211
67	BMW	M6	3	2466	1.2165

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
68	FORD MOTOR CO	LINCOLN MKZ	39	32303	1.2073
69	NISSAN	INFINITI QX60	47	39331	1.1950
70	SUBARU	TRIBECA	1	843	1.1862
71	KIA	SOUL	153	129110	1.1850
72	CHRYSLER	JEEP PATRIOT	155	130916	1.1840
73	MERCEDES-BENZ	C- CLASS	81	69728	1.1617
74	VOLKSWAGEN	BEETLE	31	27710	1.1187
75	GENERAL MOTORS	CADILLAC ATS	40	36424	1.0982
76	BMW	M5	2	1834	1.0905
77	MERCEDES-BENZ	SL-CLASS	5	4599	1.0872
78	FORD MOTOR CO	FOCUS	351	329577	1.0650
79	TOYOTA	LEXUS IS	48	45439	1.0564
80	MITSUBISHI	OUTLANDER	49	47568	1.0301
81	KIA	CADENZA	18	18234	0.9872
82	VOLKSWAGEN	PASSAT	100	102115	0.9793
83	AUDI	AUDI RS7	1	1029	0.9718
84	GENERAL MOTORS	BUICK VERANO	44	45394	0.9693
85	KIA	SPORTAGE	33	34501	0.9565
86	NISSAN	INFINITI QX50	1	1097	0.9116
87	BMW	3	93	102723	0.9053
88	FIAT	500	35	38990	0.8977
89	AUDI	AUDI R8	1	1115	0.8969
90	BMW	5	48	53784	0.8925
91	HYUNDAI	VELOSTER	17	19203	0.8853
92	MASERATI	QUATTROPORTE	4	4523	0.8844
93	TOYOTA	LEXUS GS	18	20420	0.8815
94	VOLKSWAGEN	EOS	3	3409	0.8800
95	HYUNDAI	GENESIS	10	11605	0.8617
96	CHRYSLER	DODGE DART	45	52715	0.8536
97	SUBARU	BRZ	5	5893	0.8485
98	GENERAL MOTORS	CADILLAC SRX	44	51882	0.8481
99	VOLVO	XC60	8	9777	0.8182
100	HYUNDAI	AZERA	6	7406	0.8102
101	BMW	4	23	28602	0.8041

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
102	FORD MOTOR CO	FLEX	21	26116	0.8041
103	VOLKSWAGEN	GTI	4	5082	0.7871
104	TOYOTA	SCION IQ	2	2581	0.7749
105	MERCEDES-BENZ	E-CLASS	81	105191	0.7700
106	BMW	2	2	2697	0.7416
107	JAGUAR LAND ROVER	F-TYPE	3	4053	0.7402
108	HONDA	ACURA TSX	5	6789	0.7365
109	VOLKSWAGEN	CC	8	10893	0.7344
110	TOYOTA	VENZA	20	27339	0.7316
111	HONDA	CIVIC	193	264382	0.7300
112	HYUNDAI	TUCSON	29	39796	0.7287
113	JAGUAR LAND ROVER	LAND ROVER EVOQUE	5	6882	0.7265
114	GENERAL MOTORS	CHEVROLET CORVETTE	25	34585	0.7229
115	MERCEDES-BENZ	CLS-CLASS	8	11125	0.7191
116	NISSAN	MURANO	39	54422	0.7166
117	FORD MOTOR CO	EDGE	87	121453	0.7163
118	MERCEDES-BENZ	CLA-CLASS	31	43391	0.7144
119	GENERAL MOTORS	GMC TERRAIN	65	91199	0.7127
120	NISSAN	370Z	6	8427	0.7120
121	AUDI	AUDI A4/A5	28	39681	0.7056
122	VOLVO	S60	9	12833	0.7013
123	NISSAN	PATHFINDER	67	96879	0.6916
124	PORSCHE	CAYMAN	4	5914	0.6764
125	HONDA	ACCORD	263	389696	0.6749
126	TOYOTA	SCION XD	5	7535	0.6636
127	HONDA	ACURA RLX	5	7946	0.6292
128	MAZDA	MAZDA6	34	54740	0.6211
129	HONDA	ACURA ILX	10	16349	0.6117
130	BMW	X3	24	39732	0.6040
131	AUDI	AUDI S4/S5	9	15058	0.5977
132	HONDA	INSIGHT	2	3349	0.5972
133	MERCEDES-BENZ	GLK-CLASS	21	35296	0.5950
134	AUDI	AUDI SQ5	2	3395	0.5891
135	NISSAN	QUEST VAN	5	8561	0.5840

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
136	HONDA	CR-Z	2	3473	0.5759
137	HONDA	ACURA TL	7	12320	0.5682
138	HYUNDAI	SANTA FE	57	103747	0.5494
139	HONDA	PILOT	15	27550	0.5445
140	AUDI	AUDI Q5	21	38610	0.5439
141	TOYOTA	TACOMA PICKUP	76	139852	0.5434
142	MERCEDES-BENZ	SMART FORTWO	4	7428	0.5385
143	CHRYSLER	JEEP CHEROKEE	84	158441	0.5302
144	FORD MOTOR CO	LINCOLN MKX	9	17058	0.5276
145	NISSAN	ROGUE	81	158256	0.5118
146	FORD MOTOR CO	ESCAPE	187	370239	0.5051
147	TOYOTA	LEXUS RX	28	55586	0.5037
148	MAZDA	CX-5	49	98354	0.4982
149	SUBARU	IMPREZA	34	68503	0.4963
150	NISSAN	JUKE	16	32415	0.4936
151	PORSCHE	911	5	10575	0.4728
152	TOYOTA	HIGHLANDER	38	81277	0.4675
153	TOYOTA	SIENNA	59	126353	0.4669
154	GENERAL MOTORS	CHEVROLET EQUINOX	98	214114	0.4577
155	TOYOTA	AVALON	29	65552	0.4424
156	KIA	SEDONA	6	13917	0.4311
157	BMW	Z4	1	2327	0.4297
158	TOYOTA	LEXUS CT	5	11749	0.4256
159	TOYOTA	LEXUS LS	4	9512	0.4205
160	MAZDA	MAZDA3	38	93224	0.4076
161	BMW	MINI COOPER	19	46626	0.4075
162	SUBARU	LEGACY	14	34682	0.4037
163	HONDA	ACURA RDX	17	43179	0.3937
164	MASERATI	GHIBLI	3	7720	0.3886
165	FORD MOTOR CO	C-MAX	8	20667	0.3871
166	NISSAN	LEAF	4	10339	0.3869
167	TOYOTA	LEXUS ES	27	71126	0.3796
168	TOYOTA	PRIUS	69	184189	0.3746
169	SUBARU	OUTBACK	46	122958	0.3741

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
170	MAZDA	CX-9	7	19109	0.3663
171	SUBARU	FORESTER	53	145636	0.3639
172	TOYOTA	RAV4	71	199173	0.3565
173	GENERAL MOTORS	CADILLAC CTS	14	39484	0.3546
174	NISSAN	NV 200 TAXI	4	11577	0.3455
175	SUBARU	XV CROSSTREK	30	87381	0.3433
176	GENERAL MOTORS	BUICK ENCORE	18	53672	0.3354
177	HONDA	ACURA MDX	22	68547	0.3209
178	GENERAL MOTORS	CHEVROLET VOLT	7	21840	0.3205
179	AUDI	AUDI A6	7	22620	0.3095
180	JAGUAR LAND ROVER	XF	1	3239	0.3087
181	HONDA	CR-V	115	383890	0.2996
182	BMW	X1	8	26766	0.2989
183	TOYOTA	SCION XB	5	16975	0.2946
184	MAZDA	MX-5 MIATA	1	3491	0.2865
185	TOYOTA	FJ CRUISER	5	17726	0.2821
186	HONDA	CROSSTOUR	2	9411	0.2125
187	MERCEDES-BENZ	SLK-CLASS	1	4942	0.2023
188	AUDI	AUDI ALLROAD	1	4960	0.2016
189	FORD MOTOR CO	TRANSIT CONNECT	6	36239	0.1656
190	CHRYSLER	JEEP WRANGLER	24	172362	0.1392
191	TESLA	MODEL S	2	17791	0.1124
192	ALFA ROMEO	4C	0	19	0.0000
193	ASTON MARTIN	VANTAGE	0	222	0.0000
194	ASTON MARTIN	RAPIDE	0	235	0.0000
195	ASTON MARTIN	DB9	0	335	0.0000
196	ASTON MARTIN	VANQUISH	0	480	0.0000
197	AUDI	AUDI S6	0	1309	0.0000
198	AUDI	AUDI RS5	0	1703	0.0000
199	BENTLEY MOTORS	MULSANNE	0	151	0.0000
200	BENTLEY MOTORS	CONTINENTAL	0	1734	0.0000
201	BMW	I8	0	768	0.0000
202	BMW	M235	0	1520	0.0000
203	BMW	I3	0	9127	0.0000

	Manufacturer	Make/Model (line)	Thefts MY/CY 2014	Production (Mfr's) MY 2014	MY/CY 2014 Theft Rate (per 1,000 vehicles produced)
204	BMW	X5	0	35853	0.0000
205	BUGATTI	VEYRON	0	7	0.0000
206	BYD MOTORS	E6	0	50	0.0000
207	CHRYSLER	DODGE VIPER	0	798	0.0000
208	FERRARI	LAFERRARI	0	50	0.0000
209	FERRARI	FF	0	183	0.0000
210	FERRARI	F12BERLINETTA	0	344	0.0000
211	FERRARI	CALIFORNIA	0	574	0.0000
212	FORD MOTOR CO	EXPLORER	0	4331	0.0000
213	GENERAL MOTORS	CADILAC ELR	0	2318	0.0000
214	HONDA	FCX CLARITY	0	1	0.0000
215	HONDA	FIT	0	599	0.0000
216	HYUNDAI	EQUUS	0	4638	0.0000
217	JAGUAR LAND ROVER	XK	0	1294	0.0000
218	JAGUAR LAND ROVER	LAND ROVER LR2	0	2383	0.0000
219	JAGUAR LAND ROVER	XJ	0	3737	0.0000
220	LAMBORGHINI	GALLARDO	0	159	0.0000
221	LAMBORGHINI	AVENTADOR	0	317	0.0000
222	LOTUS	EVORA	0	280	0.0000
223	MASERATI	GRANTURISMO	0	2252	0.0000
224	MCLAREN	P1	0	43	0.0000
225	MCLAREN	MP4-12C	0	236	0.0000
226	MERCEDES-BENZ	CL-CLASS	0	298	0.0000
227	MERCEDES-BENZ	B- CLASS	0	1585	0.0000
228	MITSUBISHI	I-MIEV	0	219	0.0000
229	NISSAN	GT-R	0	1547	0.0000
230	PAGANI	HUAYRA	0	24	0.0000
231	PORSCHE	BOXSTER	0	4316	0.0000
232	ROLLS ROYCE	PHANTOM	0	162	0.0000
233	ROLLS ROYCE	GHOST	0	390	0.0000
235	ROLLS ROYCE	WRAITH	0	432	0.0000
236	VOLVO	XC70	0	2267	0.0000
	Theft rate per 1,000 vehicles produced =	$\left(\frac{\textbf{Total theft}}{\textbf{Total production}}\right)$ **x1000**	**13,778**	**11,954,769**	**1.1525**

Issued in Washington, DC, September 8, 2016 under authority delegated in 49 CFR 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2016–0057; 4500030113]

RIN 1018–BB54

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Iiwi (Drepanis coccinea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-Month petition finding; proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the iiwi (*Drepanis coccinea*), a bird species from the Hawaiian Islands, as a threatened species under the Endangered Species Act (Act). After review of all best available scientific and commercial information, we find that listing the iiwi as a threatened species under the Act is warranted. Accordingly, we propose to list the iiwi as a threatened species throughout its range. If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation will be to add this species to the Federal List of Endangered and Threatened Wildlife.

DATES: We will accept comments received or postmarked on or before November 21, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 4, 2016.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R1–ES–2016–0057, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2016–0057; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments* below for more information).

FOR FURTHER INFORMATION CONTACT: Mary Abrams, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; by telephone (808–792–9400); or by facsimile (808–792–9581). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A 12-month petition finding that listing the iiwi under the Act is warranted; and (2) a proposed rule to list the iiwi as a threatened species under the Act.

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, a species or subspecies may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act.

We are proposing to list the iiwi (*Drepanis coccinea*) as threatened under the Act because of current and future threats, and listing can only be done by issuing a rule. The iiwi no longer occurs across much of its historical range, and faces a variety of threats in the form of diseases and impacts to its remaining habitat.

Delineation of critical habitat requires, within the geographical area occupied by the species, identification of the physical or biological features essential to the species' conservation. A careful assessment of the biological needs of the species and the areas that may have the physical or biological features essential for the conservation of the species and that may require special management considerations or protections, and thus qualify for designation as critical habitat, is particularly complicated in this case by the ongoing and projected effects of climate change and will require a thorough assessment. We require additional time to analyze the best available scientific data in order to identify specific areas appropriate for critical habitat designation and to analyze the impacts of designating such areas as critical habitat. Accordingly, we find designation of critical habitat for the iiwi to be "not determinable" at this time.

What this document does. This document proposes the listing of the iiwi as a threatened species. We previously published a 90-day finding for the iiwi, and this document includes a 12-month finding and proposed listing rule, which assesses all available information regarding status of and threats to the iiwi.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the primary threats to the iiwi are its susceptibility to avian malaria (Factor C) and the expected reduction in disease-free habitat as a result of increased temperatures caused by climate change (Factor E). Although not identified as primary threat factors, rapid ohia death, a disease that affects the tree species required by iiwi for nesting and foraging, and impacts from nonnative invasive plants and feral ungulates, contribute to the degradation and curtailment of the iiwi's remaining, disease-free native ohia forest habitat, exacerbating threats to the species' viability.

We will seek peer review. We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

A species status report for the iiwi was prepared by a team of Service biologists, with the assistance of scientists from the U.S. Geological Survey's (USGS) Pacific Islands Ecosystems Research Center and the Service's Pacific Islands Climate Change

Cooperative. We also obtained review and input from experts familiar with avian malaria and avian genetics. The species status report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the past, present, and future threats to the iiwi. We will invite at least three scientists with expertise in Hawaiian forest bird biology, avian malaria, and climate change to conduct an independent peer review of the species status report. The species status report and other materials relating to this proposal can be found at *http://www.regulations.gov,* at Docket No. FWS–R1–ES–2016–0057, or by contacting the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, including land owners and land managers, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The iiwi's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of the iiwi.

(5) Specific information on:

- What areas currently occupied, and that contain the necessary physical or biological features essential for the conservation of the iiwi, we should include in any future designation of critical habitat and why;
- Whether special management considerations or protections may be required for the physical or biological features essential to the conservation of the iiwi; and
- What areas not currently occupied are essential to the conservation of the iiwi and why.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule one or more public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of appropriate and independent specialists regarding this proposed rule and the accompanying draft species status report (see Status Assessment for the Iiwi, below). The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. Peer reviewers have expertise in the iiwi's life history, habitat, physical and biological requirements, avian diseases including malaria, and climate change, and are currently reviewing the draft species status report, which will inform our determination. We invite comment from the peer reviewers during this public comment period.

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants (Lists) that contains substantial scientific or commercial information indicating that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition that the petitioned action is either: (a) Not warranted; (b) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by pending proposals to determine whether other species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Lists. With this publication, we have determined that the petitioned action to list the iiwi is warranted, and we are proposing to list the species.

Previous Federal Actions

On August 25, 2010, we received a petition dated August 24, 2010, from Noah Greenwald, Center for Biological Diversity, and Dr. Tony Povilitis, Life Net, requesting that the iiwi be listed as an endangered or threatened species and that critical habitat be designated under the Act. In a September 10, 2010, letter to the petitioners, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we were required to complete a significant number of listing and critical habitat actions in Fiscal Year 2010, including complying with court orders and court-approved settlement agreements with specific deadlines, listing actions with absolute statutory deadlines, and high-priority listing actions. Our listing and critical habitat funding for Fiscal Year 2010 was committed to complying with these court orders, settlement agreements, and statutory deadlines. Therefore, we were unable to further address the petition to list the iiwi at that time.

We published a 90-day finding for the iiwi in the **Federal Register** on January 24, 2012 (77 FR 3423). Based on that review, we found that the petition presented substantial information indicating that listing the iiwi may be warranted, and we initiated a status review of the species. With the publication of this notice, we provide our 12-month finding and a proposal to list the iiwi as a threatened species under the Act.

Status Assessment for the Iiwi

A thorough review of the taxonomy, life history, and ecology of the iiwi (*Drepanis coccinea*) is presented in the draft Iiwi (*Drepanis coccinea*) Species Status Report, available online at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2016–0057. The species status report documents the results of our comprehensive biological status review for the iiwi, including an assessment of the potential stressors to the species. The species status report does not represent a decision by the Service on whether the iiwi should be proposed for listing as a threatened or endangered species under the Act. It does, however, provide the scientific basis that informs our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the species status report.

Summary of Biological Status

A medium-sized forest bird notable for its iconic bright red feathers, black wings and tail, and a long, curved bill (Hawaii Audubon Society 2011, p. 97), the iiwi belongs to the family Fringillidae and the endemic Hawaiian honeycreeper subfamily, Drepanidinae (Pratt *et al.* 2009, pp. 114, 122). Iiwi songs are complex with variable creaks (often described as sounding like a "rusty hinge"), whistles, or gurgling sounds, and they sometimes mimic other birds (Hawaii Audubon Society 2011, p. 97). The species is found primarily in closed canopy, montane wet or montane mesic forests composed of tall stature ohia (*Metrosideros polymorpha*) trees or ohia and koa (*Acacia koa*) tree mixed forest. The iiwi's diet consists primarily of nectar from the flowers of ohia and mamane (*Sophora chrysophylla*), various plants in the lobelia (Campanulaceae) family (Pratt *et al.* 2009, p. 193), and occasionally, insects and spiders (Pratt *et al.* 2009, p. 193; Hawaii Audubon Society 2011, p. 97).

Although iiwi may breed anytime between October and August (Hawaii Audubon Society 2011, p. 97), the main breeding season occurs between February and June, which coincides with peak flowering of ohia (Fancy and Ralph 1997, p. 2). Iiwi create cup-shaped nests typically within the upper canopy of ohia (Hawaii Audubon Society 2011, p. 97), and breeding pairs defend a small area around the nest and disperse after the breeding season (Fancy and Ralph 1997, p. 2). An iiwi clutch typically consists of two eggs, with a breeding pair raising one to two broods per year (Hawaii Audubon Society 2011, p. 97).

Well known for their seasonal movements in response to the availability of flowering ohia and mamane, iiwi are strong fliers that move long distances following their breeding season to locate nectar sources (Fancy and Ralph 1998, p. 3; Kuntz 2008, p. 1; Guillamet *et al.* 2015, pp. EV–8—EV–9). The iiwi's seasonal movement to lower elevation areas in search of nectar sources is an important factor in the exposure of the species to avian diseases, particularly malaria (discussed below).

Although historical abundance estimates are not available, the iiwi was considered one of the most common of the native forest birds in Hawaii by early naturalists, described as "ubiquitous" and found from sea level to the tree line across all the major islands (Banko 1981, pp. 1–2). Today the iiwi is no longer found on Lanai and only a few individuals may be found on Oahu, Molokai, and west Maui. Remaining populations of iiwi are largely restricted to forests above approximately 3,937 feet (ft) (1,200 meters (m)) in elevation on Hawaii Island (Big Island), east Maui, and Kauai. As described below, the present distribution of iiwi corresponds with areas that are above the elevation at which the transmission of avian malaria readily occurs ("disease-free" habitats). The current abundance of iiwi rangewide is estimated at a mean of 605,418 individuals (range 550,972 to 659,864). Ninety percent of all iiwi now occur on Hawaii Island, followed by east Maui (about 10 percent), and Kauai (less than 1 percent) (Paxton *et al.* 2013, p. 10).

Iiwi population trends and abundance vary across the islands. The population on Kauai appears to be in steep decline, with a modeled rate of decrease equivalent to a 92 percent reduction in population over a 25-year period (Paxton *et al.* 2013, p. 10); the total population on Kauai is estimated at a mean of 2,551 birds (range 1,934 to 3,167) (Paxton *et al.* 2013, p. 10). Trends on Maui are mixed, but populations there generally appear to be in decline; East Maui supports an estimated population of 59,859 individuals (range 54,569 to 65,148) (Paxton *et al.* 2013, p. 10). On Hawaii Island, which supports the largest remaining numbers of iiwi at an estimated average of 543,009 individuals (range 516,312 to 569,706), there is evidence for stable or declining populations on the windward side of the island, while trends are strongly increasing on the leeward (Kona) side. As noted above, iiwi have been extirpated from Lanai, and only a few individual birds have been sporadically detected on the islands of Oahu, Molokai, and on west Maui in recent decades. Of the nine iiwi population regions for which sufficient information is available for quantitative inference, five of those show strong or very strong evidence of declining populations; one, a stable to declining population; one, a stable to increasing population; and two, strong evidence for increasing populations. Four of the nine regions show evidence of range contraction. Overall, based on the most recent surveys (up to 2012), approximately 90 percent of remaining iiwi are restricted to forest within a narrow band between 4,265 and 6,234 ft (1,300 and 1,900 m) in elevation (Paxton *et al.* 2013, pp. 1, 10–11, and Figure 1) (See the Population Status section of the draft species status report for details).

Summary of Factors Affecting the Species

The Act directs us to determine whether any species is an endangered species or a threatened species because of any of five various factors affecting its continued existence. Our species status report evaluated many potential stressors to iiwi, particularly direct impacts on the species from introduced diseases, as well as predation by introduced mammals, competition with nonnative birds, climate change, ectoparasites, and the effects of small population size. We also assessed stressors that may affect the extent or quality of the iiwi's required ohia forest habitat, including ohia dieback, ohia rust, drought, fires, volcanic eruptions, climate change, and particularly rapid ohia death and habitat alteration by nonnative plants and feral ungulates.

All species experience stressors; we consider a stressor to rise to the level of a threat to the species if the magnitude of the stressor is such that it places the current or future viability of the species at risk. In considering what stressors or factors might constitute threats to a species, we must look beyond the exposure of the species to a particular stressor to evaluate whether the species may respond to that stressor in a way that causes impacts to the species now or is likely to cause impacts in the future. If there is exposure to a stressor and the species responds negatively, the stressor may be a threat. We consider the stressor to be a threat if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of stressors that could affect a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these stressors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Our species status report examines all of the potential stressors to iiwi in detail. Here we describe those stressors that we conclude rise to the level of a threat to the long-term viability of iiwi.

Based on our comprehensive assessment of the status of the iiwi in our species status report, we conclude that the best scientific data available consistently identifies avian malaria as the primary driver of declines in abundance and distribution of iiwi observed since the turn of the 20th century. This conclusion is supported by the extremely high mortality rate of iiwi (approximately 95 percent) in response to avian malaria, and the disappearance of iiwi from low-elevation ohia forest where it was formerly common and where malaria is prevalent today. Both the life cycle of the mosquito vector and the development and transmission of the malaria parasite are temperature-limited, thus iiwi are now found primarily in high elevation forests above 3,937 ft (1,200 m) where malaria prevalence and transmission is only brief and episodic, or nonexistent, under current conditions. Iiwi have not demonstrated any substantial sign of developing resistance to avian malaria to date and do not appear to be genetically predisposed to evolve resistance (Jarvi *et al.* 2004, pp. 2,164–2,166). As the prevalence of avian malaria increases in association with warmer temperatures (*e.g.,* LaPointe *et al.* 2012, p. 217), the extent and impact of avian diseases upon iiwi are projected to become greatly exacerbated by climate change during this century.

Additionally, on Hawaii Island where 90 percent of the iiwi currently occur, the disease rapid ohia death was identified as an emergent source of habitat loss and degradation that has the potential to exacerbate other stressors to ohia forest habitat, as well as reduce the amount of habitat remaining for iiwi in an already limited, disease-free zone contained within a narrow elevation band. Rapid ohia death, a recently discovered tree disease that leads to significant mortality of the ohia that iiwi depend upon for nesting and foraging, is quickly becoming a matter of urgent concern. If rapid ohia death continues to spread across the native ohia forests, it will directly threaten iiwi by eliminating the limited, malaria-free native forest areas that remain for the species.

Based on the analysis in our species status report, invasive, nonnative plants and feral ungulates have major, adverse impacts on ohia forest habitat. Although we did not find that the historical and ongoing habitat alteration by nonnative species is the primary cause of the significant observed decline in iiwi's abundance and distribution, the cumulative impacts to iiwi's habitat, and in particular the activities of feral ungulates, are not insignificant and likely exacerbate the effects of avian malaria. Feral ungulates, particularly pigs (*Sus scrofa*), goats (*Capra hircus*), and axis deer (*Axis axis*), degrade ohia forest habitat by spreading nonnative plant seeds and grazing on and trampling native vegetation, and contributing to erosion (Mountainspring 1986, p. 95; Camp *et al.* 2010, p. 198). Invasive nonnative plants, such as strawberry guava (*Psidium cattleianum*) and albizia trees (*Falcataria moluccana*), prevent or retard regeneration of ohia forest used by iiwi for foraging and nesting. The combined effects of drought and nonnative, invasive grasses have resulted in increased fire frequency and the conversion of mesic ohia woodland to exotic grassland in many areas of Hawaii ((D'Antonio and Vitousek 1992, p. 67; Smith and Tunison 1992, pp. 395–397; Vitousek *et al.* 1997, pp. 7–8; D'Antonio *et al.* 2011, p. 1,617). Beyond alteration of ohia forest, feral pig activities that create mosquito habitat in ohia forest where there would otherwise be very little to none is identified as an important compounding stressor that acts synergistically with the prevalence of malaria and results in iiwi mortality. Although habitat loss and degradation is not, by itself, considered to be a primary driver of iiwi declines, the habitat impacts described above contribute cumulatively to the vulnerability of the species to the threat of avian malaria by degrading the quality and quantity of the remaining disease-free habitat upon which the iiwi depends. In this regard, rapid ohia death, discussed above, is quickly becoming a matter of urgent concern as it can further exacerbate and compound effects from the suite of stressors that impact iiwi (see below).

Avian Diseases

The introduction of avian diseases transmitted by the introduced southern house mosquito (*Culex quinquefasciatus*), including avian malaria (caused by the protozoan *Plasmodium relictum*) and avian pox (*Avipoxvirus* sp.), has been a key driving force in both extinctions and extensive declines over the last century in the abundance, diversity, and distribution of many Hawaiian forest bird species, including declines of the iiwi and other endemic honeycreepers (*e.g.,* Warner 1968, entire; Van Riper *et al.* 1986, entire; Benning *et al.* 2002, p. 14,246; Atkinson and LaPointe 2009a, p. 243; Atkinson and LaPointe 2009b, pp. 55–56; Samuel *et al.* 2011, p. 2,970; LaPointe *et al.* 2012, p. 214; Samuel *et al.* 2015, pp. 13–15). Nonnative to Hawaii, the first species of mosquitoes were accidentally introduced to the Hawaiian Islands in 1826, and spread quickly to the lowlands of all the major islands (Warner 1968, p. 104; Van Riper *et al.* 1986, p. 340). Early observations of birds with characteristic lesions suggest that avian poxvirus was established in Hawaii by the late 1800s (Warner 1968, p. 106; Atkinson and LaPointe 2009a, p. 55), and later genetic analyses indicate pox was present in the Hawaiian Islands by at least 1900 (Jarvi *et al.* 2008, p. 339). Avian malaria had arrived in Hawaii by at least 1920 (Warner 1968, p. 107; Van Riper *et al.* 1986, pp. 340–341; Atkinson and LaPointe 2009, p. 55; Banko and Banko 2009, p. 52), likely in association with imported cage birds (Yorinks and Atkinson 2000, p. 731), or through the deliberate introduction of nonnative birds to replace the native birds that had by then disappeared from the lowlands (Atkinson and LaPointe 2009a, p. 55).

Avian Malaria

As noted above, avian malaria is a disease caused by the protozoan parasite *Plasmodium relictum;* the parasite is transmitted by the mosquito *Culex quinquefasciatus,* and invades the red blood cells of birds. Birds suffering from malaria infection undergo an acute phase of the disease during which parasitemia, a quantitative measure of the number of *Plasmodium* parasites in the circulating red blood cells, increases steadily. Because the parasite destroys the red blood cells, anemia and decline of physical condition can quickly result. In native Hawaiian forest birds, death may result either directly from the effects of anemia, or indirectly when anemia-weakened birds become vulnerable to predation, starvation, or a combination of other stressors (LaPointe *et al.* 2012, p. 213). Studies have demonstrated that native Hawaiian birds that survive avian malaria remain chronically infected, thus becoming lifetime reservoirs of the disease (Samuel *et al.* 2011, p. 2,960; LaPointe *et al.* 2012, p. 216) and remaining capable of further disease transmission to other native birds. In contrast, nonnative birds in Hawaii are little affected by avian malaria and later become incapable of disease transmission (LaPointe *et al.* 2012, p. 216).

Wild iiwi infected with malaria are rarely captured, apparently because the onset of infection leads to rapid mortality, precluding their capture (Samuel *et al.* 2011, p. 2,967; LaPointe *et al.* 2016, p. 11). However, controlled experiments with captive birds have demonstrated the susceptibility of native Hawaiian honeycreepers to avian malaria; mortality is extremely high in some species, including iiwi, experimentally infected with the disease. As early as the 1960s, experiments with Laysan finches (*Telespiza cantans*) and several other species of native Hawaiian honeycreepers demonstrated 100 percent mortality from malaria in a very short period of time (Warner 1968, pp. 109–112, 118; Fig. 426). In a study specific to iiwi, Atkinson *et al.* (1995, entire) demonstrated that the species suffers approximately 95 percent mortality when infected with malaria (Atkinson *et al.* 1995, p. S65). In that study, iiwi and a nonnative control species were exposed to avian malaria through infective mosquito bites, and subjected to different dosages of infection (single vs. multiple bites). Following exposure to biting mosquitoes, food consumption, weight, and parasitemia were monitored for all test groups. None of the nonnative birds developed malarial infections, while all of the exposed iiwi developed infections within 4 days. Mortality of the high-dose iiwi reached 100 percent by day 29, and mortality of the low-dose birds reached 90 percent by day 37, an average of 95 percent mortality between the two groups (Atkinson *et al.* 1994, p. S63). A single male iiwi survived the initial infection and, following re-exposure with the same *Plasmodium* isolate, no subsequent increase in parasitemia was detected, suggesting a possible development of some immunity (Atkinson *et al.* 1995, p. S66). The authors suggested that iiwi may lack sufficient diversity in the major histocompatibility complex or genetically based immunity traits capable of recognizing and responding to malarial antigens, an important factor in iiwi's susceptibility to introduced disease (Atkinson *et al.* 1995, pp. S65–S66).

Despite extremely high mortality of iiwi from avian malaria in general, the aforementioned study as well as two other studies have demonstrated that a few individuals are capable of surviving the infection (Van Riper *et al.* 1986, p. 334; Atkinson *et al.* 1995, p. S63; Freed *et al.* 2005, p. 759). If a genetic correlation were identified, it is possible that surviving individuals could serve as a potential source for the evolution of genetic resistance to malaria, although evidence of this is scant to date. Eggert *et al.* (2008, p. 8) reported a slight but detectable level of genetic differentiation between iiwi populations located at mid and high elevation, potentially the first sign of selection acting on these populations in response to disease. Additionally, the infrequent but occasional sighting of iiwi on Oahu indicates a possible developed resistance or tolerance to avian malaria.

Despite these observations, there is, as of yet, no indication that iiwi have developed significant resistance to malaria such that individuals can survive in areas where the disease is strongly prevalent, including all potential low-elevation forest habitat and most mid-elevation forest habitat (Foster *et al.* 2007, p. 4,743; Eggert *et al.* 2008, p. 2). In one study, for example, 4 years of mist-netting effort across extensive areas of Hawaii Island resulted in the capture of a substantial number of iiwi, yet no iiwi were captured in low-elevation forests and only a few were captured in mid-elevation forests (Samuel *et al.* 2015, p. 11). In addition, the results of several studies indicate that iiwi have low genetic variability, and even genetic impediments to a possible evolved resistance to malaria in the future (Jarvi *et al.* 2001, p. 255; Jarvi *et al.* 2004, Table 4, p. 2,164; Foster *et al.* 2007, p. 4,744; Samuel *et al.* 2015, pp. 12–13). For example, Eggert *et al.* (2008, p. 9) noted that gene variations that may confer resistance appear to be rare in iiwi. Three factors—the homogeneity of a portion of the iiwi genome, the high mortality rate of iiwi in response to avian malaria, and high levels of gene flow resulting from the wide-ranging nature of the species—suggest that iiwi would likely require a significant amount of time for development of genetic resistance to avian malaria, assuming the species retains a sufficiently large reservoir of genetic diversity for a response to natural selection. Genetic studies of iiwi have also noted a dichotomy between the lack of variation in mitochondrial DNA (Tarr and Fleischer 1993, 1995; Fleischer *et al.* 1998; Foster *et al.* 2007, p. 4,743), and maintenance of variation in nuclear DNA (Jarvi *et al.* 2004, p. 2,166; Foster *et al.* 2007, p. 4,744); both attributes suggest that iiwi may have historically experienced a drastic reduction in population size that led to a genetic bottleneck. Studies have also found low diversity in the antigen-binding sites of the iiwi's major histocompatibility complex (that part of an organism's immune system that helps to recognize foreign or incompatible proteins (antigens) and trigger an immune response).

The relationship between temperature and avian malaria is of extreme importance to the current persistence of iiwi and the viability of the species in the future. The development of the *Plasmodium* parasite that carries malaria responds positively to increased temperature, such that malaria transmission is greatest in warm, low-elevation forests with an average temperature of 72 °F (22 °C), and is largely absent in high-elevation forests above 4,921 ft (1,500 m) with cooler mean annual temperatures around 57 °F (14 °C) (Ahumada *et al.* 2004, p. 1,167; LaPointe *et al.* 2010, p. 318; Liao *et al.* 2015, p. 4,343). High-elevation forests thus currently serve as disease-free habitat zones for Hawaiian forest birds, including iiwi. Once one of the most common birds in forests throughout the Hawaiian islands, iiwi are now rarely found at lower elevations, and are increasingly restricted to high-elevation mesic and wet forests where cooler temperatures limit both the development of the malarial parasite and mosquito densities (Scott *et al.*

1986, pp. 367–368; Ahumada *et al.* 2004, p. 1,167; LaPointe *et al.* 2010, p. 318; Samuel *et al.* 2011, p. 2,960; Liao *et al.* 2015, p. 4,346; Samuel *et al.* 2015, p. 14).

Temperature also affects the life cycle of the malaria mosquito vector, *Culex quinquefasciatus.* Lower temperatures slow the development of larval stages and can affect the survival of adults (Ahumada *et al.* 2005, pp. 1,165–1,168; LaPointe *et al.* 2012, p. 217). Although closely tied to altitude and a corresponding decrease in temperature, the actual range of mosquitoes varies with season. Generally, as temperature decreases with increasing elevation, mosquito abundance drops significantly at higher altitudes. In the Hawaiian Islands, the mosquito boundary occurs between 4,921 and 5,577 ft (1,500 and 1,700 m) (VanRiper *et al.* 1986, p. 338; LaPointe *et al.* 2012, p. 218). Areas above this elevation are at least seasonally relatively free of mosquitoes, thus malaria transmission is unlikely at these high elevations under current conditions.

Early on, Ralph and Fancy (1995, p. 741) and Atkinson *et al.* (1995, p. S66) suggested that the seasonal movements of iiwi to lower elevation areas where ohia is flowering may result in increased contact with malaria-infected mosquitoes, which, combined with the iiwi's high susceptibility to the disease, may explain their observed low annual survivorship relative to other native Hawaiian birds. Compounding the issue, other bird species, which overlap with iiwi in habitat, including Apapane (*Himatione sanguinea*), are relatively resistant to the diseases and carry both *Plasmodium* and avian pox virus. As reservoirs, they carry these diseases upslope where mosquitoes are less abundant but still occur in numbers sufficient to facilitate and continue transmission to iiwi (Ralph and Fancy 1995, p. 741). Subsequent studies have confirmed the correlation between risk of malaria infection and iiwi altitudinal migrations, and suggest upper elevation forest reserves in Hawaii may not adequately protect mobile nectarivores such as iiwi. Kuntz (2008, p. 3) found iiwi populations at upper elevation study sites (6,300 ft (1,920 m)) declined during the non-breeding season when birds departed for lower elevations in search of flowering ohia, traveling up to 12 mi (19.4 km) over contiguous mosquito-infested wet forest. Guillamet *et al.* (2015, p. 192) used empirical measures of seasonal movement patterns in iiwi to model how movement across elevations increases the risk of disease exposure, even affecting breeding populations in disease-free areas. La Pointe *et al.* (unpublished data 2015) found that, based on malaria prevalence in all Hawaiian forest birds, species migrating between upper elevations to lower elevations increased their risk of exposure to avian malaria by as much as 27 times. The greater risk was shown to be due to a much higher abundance of mosquitoes at lower elevations, which in turn was attributable at least in part to the higher abundance of pigs and their activities in lower elevation forests (discussed further below).

Avian Pox

Avian pox (or bird pox) is an infection caused by the virus *Avipoxvirus,* which produces large, granular, and eventually necrotic lesions or tumors on exposed skin or diphtheritic lesions on the mouth, trachea, and esophagus of infected birds. Avian pox can be transmitted through cuts or wounds upon physical contact or through the mouth parts of blood-sucking insects such as the mosquito *Culex quinquefasciatus,* the common vector for both the pox virus and avian malaria (LaPointe *et al.* 2012, p. 221). Tumors or lesions caused by avian pox can be crippling for birds, and may result in death. Although not extensively studied, existing data suggest that mortality from avian pox may range from 4 to 10 percent observed in Oahu Elepaio (*Chasiempis ibidis*) (for birds with active lesions (VanderWerf 2009, p. 743) to 100 percent in Laysan finches (Warner 1968, p. 108). VanderWerf (2009, p. 743) has also suggested that mortality levels from pox may correlate with higher rainfall years, and at least in the case of the Elepaio, observed mortality may decrease over time with a reduction in susceptible birds.

As early as 1902 native birds suffering from avian pox were observed in the Hawaiian Islands, and Warner (1968, p. 106) described reports that epizootics of avian pox "were so numerous and extreme that large numbers of diseased and badly debilitated birds could be observed in the field." As the initial wave of post-European extinctions of native Hawaiian birds was largely observed in the late 1800s, prior to the introduction of avian malaria (Van Riper *et al.* 1986, p. 342), it is possible that avian pox played a significant role, although there is no direct evidence (Warner 1968, p. 106). Molecular work has revealed two genetically distinct variants of the pox virus affecting forest birds in Hawaii that differ in virulence (Jarvi *et al.* 2008, p. 347): One tends to produce fatal lesions, and the other appears to be less severe, based on the observation of recurring pox infections in birds with healed lesions (Atkinson *et al.* 2009, p. 56).

The largest study of avian pox in scope and scale took place between 1977 and 1980, during which approximately 15,000 native and nonnative forest birds were captured and examined for pox virus lesions from 16 different locations on transects along Mauna Loa on Hawaii Island (Van Riper *et al.* 2002, pp. 929–942). The study made several important determinations, including that native forest birds were indeed more susceptible than introduced species, that all species were more likely to be infected during the wet season, and that pox prevalence was greatest at mid-elevation sites approximately 3,937 ft (1,200 m) in elevation, coinciding with the greatest overlap between birds and the mosquito vector. Of the 107 iiwi captured and examined during the study, 17 percent showed signs of either active or inactive pox lesions (Van Riper *et al.* 2002, p. 932). Many studies of avian pox have documented that native birds are frequently infected with both avian pox and avian malaria (Van Riper *et al.* 1986, p. 331; Atkinson *et al.* 2005, p. 537; Jarvi *et al.* 2008, p. 347). This may be due to mosquito transmission of both pathogens simultaneously, because documented immune system suppression by the pox virus renders chronically infected birds more vulnerable to infection by, or a relapse of, malaria (Jarvi *et al.* 2008, p. 347), or due to other unknown factors. The relative frequency with which the two diseases co-occur makes it challenging to disentangle the independent impact of either stressor acting alone (LaPointe *et al.* 2012, p. 221), and we lack any indication of the degree to which pox may be a specific threat to iiwi or contributing to its decline.

Compounded Impacts—Feral Ungulates Create Habitat for Culex quinquefasciatus Mosquitoes and Exacerbate Impacts of Disease

It has been widely established that damage to native tree ferns (*Cibotium* spp.) and rooting and wallowing activity by feral pigs create mosquito larval breeding sites in Hawaiian forests where they would not otherwise occur. The porous geology and relative absence of puddles, ponds, and slow-moving streams in most Hawaiian landscapes precludes an abundance of water-holding habitat sites for mosquito larvae; however, *Culex quinquefasciatus* mosquitoes, the sole vector for avian malaria in Hawaii, now occur in great density in many wet forests where their larvae primarily rely on habitats created by pig activity (LaPointe 2006, pp. 1–3;

Ahumada *et al.* 2009, p. 354; Atkinson and LaPointe 2009, p. 60; Samuel *et al.* 2011, p. 2,971). Pigs compact volcanic soils and create wallows and water containers within downed, hollowed-out tree ferns, knocked over and consumed for their starchy pith (Scott *et al.* 1986, pp. 365–368; Atkinson *et al.* 1995, p. S68). The abundance of *C. quinquefasciatus* mosquitoes is also much greater in suburban and agricultural areas than in undisturbed native forest, and the mosquito is capable of dispersing up to 1 mile (1.6 kilometers) within closed-canopy native forest, including habitat occupied by the iiwi (LaPointe 2006, p. 3; LaPointe *et al.* 2009, p. 409).

In studies of native forest plots where feral ungulates (including pigs) were removed by trapping and other methods, researchers have demonstrated a correlation in the abundance of *Culex* spp. mosquitoes when comparing pig-free, fenced areas to adjacent sites where feral pig activity is unmanaged. Aruch *et al.* 2007 (p. 574), LaPointe 2006 (pp. 1–3) and LaPointe *et al.* (2009, p. 409; 2012, pp. 215, 219) assert that management of feral pigs may be strategic to managing avian malaria and pox, particularly in remote Hawaiian rain forests where studies have documented that habitats created by pigs are the most abundant and productive habitat for larval mosquitoes. Studies suggest that reduction in mosquito habitat must involve pig management across large landscapes due to the tremendous dispersal ability of *C. quinquefasciatus* and the possibility of the species invading from adjacent areas lacking management (LaPointe 2006, pp. 3–4). The consequences of feral pig activities thus further exacerbate the impacts to iiwi from avian malaria and avian pox, by creating and enhancing larval habitats for the mosquito vector, thereby increasing exposure to these diseases.

Avian Diseases—Summary

The relatively recent introduction of avian pox and avian malaria, in concert with the introduction of the mosquito disease vector, is widely viewed as one of the key factors underlying the loss and decline of native forest birds throughout the Hawaiian Islands. Evolving in the absence of mosquitoes and their vectored pathogens, native Hawaiian forest birds, particularly honeycreepers such as iiwi, lack natural immunity or genetic resistance, and thus are more susceptible to these diseases than are nonnative bird species (van Riper *et al.* 1986, pp. 327–328; Yorinks and Atkinson 2000, p. 737). Researchers consider iiwi one of the most vulnerable species, with studies showing an average of 95 percent mortality in response to infection with avian malaria (Atkinson *et al.* 1995, p. S63; Samuel *et al.* 2015, p. 2). Many native forest birds, including iiwi, are now absent from warm, low-elevation areas that support large populations of disease-carrying mosquitoes, and these birds persist only in relatively disease-free zones in high-elevation forests, above roughly 4,921 to 5,577 ft (1,500 to 1,700 m), where both the development of the malarial parasite and the density of mosquito populations are held in check by cooler temperatures (Scott *et al.* 1986, pp. 85, 100, 365–368; Woodworth *et al.* 2009, p. 1,531; Liao *et al.* 2015, pp. 4,342–4,343; Samuel *et al.* 2015, pp. 11–12). Even at these elevations, however, disease transmission may occur when iiwi move downslope to forage on ephemeral patches of flowering ohia in the nonbreeding season, encountering disease-carrying mosquitoes in the process (Ralph and Fancy 1995, p. 741; Fancy and Ralph 1998, p. 3; Guillaumet *et al.* 2015, p. EV–8; LaPointe *et al.* 2015, p. 1). Iiwi have not demonstrably developed resistance to avian malaria, unlike related honeycreepers including Amakihi (*Hemignathus* spp.) and Apapane. Due to the known extreme mortality rate of iiwi when exposed to avian malaria, we consider avian malaria in particular to pose a threat to iiwi. Having already experienced local extinctions and widespread population declines, it is possible that the species may not possess sufficient genetic diversity to adapt to these diseases (Atkinson *et al.* 2009, p. 58).

Climate Change

Based on the assessment of the best scientific data available in our species status report, we concluded that climate change exacerbates the impacts to iiwi from mosquito-borne disease, and this effect is likely to continue and worsen in the future. Air temperature in Hawaii has increased in the past century and particularly since the 1970s, with the greatest increases at higher elevations, and several conservative climate change models project continued warming in Hawaii into the future. As a result, the temperature barrier to the development and transmission of avian malaria will continue to move up in elevation in response to warmer conditions, leading to the curtailment or loss of disease-free habitats for iiwi. We briefly discuss below three climate studies that conservatively predict the iiwi will lose between 60 and 90 percent of its current (and already limited) disease-free range by the end of this century, with significant effects occurring by mid-century.

Climate Change Effects on Iiwi

Climate change is a stressor that is likely to significantly exacerbate the effects of avian malaria on iiwi both directly through increased prevalence and mortality, and indirectly through the loss of disease-free habitat. Air temperature in Hawaii has increased in the past century and particularly since the 1970s, with greater increases at high elevation (Giambelluca *et al.* 2008, pp. 2–4; Wang *et al.* 2014, pp. 95, 97). Documented impacts of increased temperature include the prevalence of avian malaria in forest birds at increasing elevation, including high-elevation sites where iiwi are already declining, for example, on Kauai (Paxton *et al.* 2013, p. 13). Several projections for future climate in Hawaii describe a continued warming trend, especially at high elevations. In our species status report, we analyzed in particular three climate studies (summarized below) that address the future of native forest birds, including iiwi, in the face of the interactions between climate change and avian malaria.

Benning *et al.* (2002) concluded that under optimistic assumptions (*i.e.*, 3.6 °F (2 °C) increase in temperature by the year 2100), malaria-susceptible Hawaiian forest birds, including iiwi, will lose most of their disease-free habitat in the three sites they considered in their projection of climate change impacts. For example, current disease-free habitat at high elevation within the Hakalau Forest National Wildlife Refuge (NWR) on the island of Hawaii (where the environment is still too cold for development of the malarial parasite) would be reduced by 96 percent by the end of the century.

Fortini *et al.* (2015) conducted a vulnerability assessment for 20 species of Hawaiian forest birds based on a projected increase of 6.1 °F (3.4 °C) under the A1B emissions scenario at higher elevations by 2100. Even under this relatively optimistic scenario, in which emissions decline after mid-century (IPCC 2007, p. 44), all species were projected to suffer range loss as the result of increased transmission of avian malaria at higher elevations with increasing temperature. Iiwi was predicted to lose 60 percent of its current range by the year 2100, and climate conditions suitable for the species will shift up in elevation, including into areas that are not currently forested, such as lava flows and high-elevation grasslands. Most of the remaining habitat for iiwi would be restricted to a single island, Hawaii Island.

Liao *et al.* (2015) generated temperature and precipitation projections under three alternative emissions scenarios and projected future malaria risk for Hawaiian forest birds. Irrespective of the scenario modeled, by mid-century (roughly 2040), malaria transmission rates and impacts to bird populations began increasing at high elevations. By 2100, the increased annual malaria transmission rate for iiwi was projected to result in population declines of 70 to 90 percent for the species, depending on the emissions scenario.

All three of these studies consistently predict a significant loss of disease-free habitat for iiwi with consequent severe reductions in population size and distribution by the year 2100, with significant changes likely to be observed as early as 2040. As the iiwi's numbers and distribution continue to decline, the remaining small, isolated populations become increasingly vulnerable to loss of ohia forest habitat from other stressors such as rapid ohia death, as well as other environmental catastrophes and demographic stochasticity, particularly should all remaining iiwi become restricted to a single island (Hawaii Island), as some scenarios suggest.

Climate change will likely exacerbate other stressors to iiwi in addition to disease. Changes in the amount and distribution of rainfall in Hawaii likely will affect the quality and extent of mesic and wet forests on which iiwi depend. However, changes in the trade wind inversion (which strongly influences rainfall) and other aspects of precipitation with climate change are difficult to model with confidence (Chu and Chen 2005, pp. 4,801–4,802; Cao *et al.* 2007, pp. 1,158–1,159; Timm *et al.* 2015, p. 107; Fortini *et al.* 2015, p. 5; Liao *et al.* 2015, p. 4,345). In addition, potential increases in storm frequency and intensity in Hawaii as a result of climate change may lead to an increase in direct mortality of individual iiwi and a decline in the species' reproductive success. Currently, no well-developed projections exist for these possible cumulative effects.

Climate Change—Summary

The natural susceptibility of native forest birds to introduced diseases, in combination with the observed restriction of Hawaiian honeycreepers to high-elevation forests, led Atkinson *et al.* (1995, p. S68) to predict two decades ago that a shift in the current mosquito distribution to higher elevations could be "disastrous for those species with already reduced populations." Thus, climate change has significant implications for the future of Hawaiian forest birds, as predictions suggest increased temperatures may largely eliminate the high-elevation forest currently inhospitable to the transmission of mosquito-borne diseases (Benning *et al.* 2002, pp. 14,247–14,249; LaPointe *et al.* 2012, p. 219; Fortini *et al.* 2015, p. 9). Samuel *et al.* (2015, p. 15) predict further reductions and extinctions of native Hawaiian birds as a consequence, noting that the iiwi is particularly vulnerable due to its high susceptibility to malaria. Several independent studies project consistently significant negative impacts to the iiwi as a result of climate change and the increased exposure to avian malaria as disease-free habitats shrink. As iiwi are known to exhibit 95 percent mortality on average as a result of avian malaria, the current numbers of iiwi are of little consequence should all or most of the remaining individuals become exposed to the disease in the future.

Rapid Ohia Death

Our species status report identified rapid ohia death (ROD), a type of *Ceratosystis* spp. vascular wilt (fungal) disease, as a factor with the potential to exacerbate the impacts currently affecting iiwi habitat and reduce the amount of disease-free habitat remaining by destroying high-elevation ohia forest. ROD was first detected in 2012 as ohia trees began mysteriously dying within lowland forests of the Puna Region of Hawaii Island. In June 2015, researchers identified the disease as ROD with an estimated area at the time of 15,000 ac (6,070 ha) of infected ohia trees (Keith *et al.* 2015, pp. 1–2). ROD affects non-contiguous ohia forest stands ranging in size from <1 ac (<0.4 ha) up to 247 ac (100 ha) with nearly all trees in these areas infected. At present the disease remains restricted to Hawaii island, with the largest affected area within the Puna District, where infected trees have been observed within approximately 4,000 discontinuous acres (1,619 ha) (Hughes 2016, pers. comm.). Based upon the most recent research, ROD-infected stands of ohia often initially show greater than 50 percent mortality, and within 2 to 3 years nearly 100 percent of trees in a stand succumb to the disease (College of Tropical Agriculture and Human Resources 2016 (*http://www2.ctahr.hawaii.edu/forestry/disease/ohia_wilt.html*)).

Affected trees are found at elevations ranging from sea level up to approximately 5,000 ft (1,524 m), including at Wailuku Forest near Hakalau Forest NWR (Hughes 2016, pers. comm.), which contains a stable to increasing iiwi population (Paxton *et al.* 2013, p. 12). As of March 2016, the amount of forest area affected on Hawaii Island is estimated to be approximately 34,000 ac (13,759 ha) (Hughes 2016, pers. comm.). Two different strains of the virus appear to be responsible for ROD (Hughes 2016, pers. comm.). These estimates demonstrate that the amount of ohia forest on Hawaii Island infected by ROD more than doubled between 2015 and 2016. While ROD is presently reported only from the island of Hawaii, it has spread across a large portion of the island, which is home to 90 percent of the current iiwi population. In some areas, affected trees have been observed within the range of iiwi (Hughes 2016, pers. comm.). Hawaii Island is particularly important for the future of iiwi, as iiwi are predicted to be largely if not entirely restricted to that island under some future climate change projections (Fortini *et al.* 2015, p. 9, Supplement 6).

Evaluation of Existing Regulatory Mechanisms and Conservation Measures

Our species status report evaluated several regulatory and other measures in place today that might address or are otherwise intended to ameliorate the stressors to iiwi. Our analysis concluded that forest habitat protection, conservation, and restoration has the potential to benefit iiwi by protecting and enhancing breeding and foraging areas for the species while simultaneously reducing the abundance of mosquito breeding sites, despite the disease vector's (*Culex quinquefasciatus)* 1-mi (1.6-km) dispersal ability (LaPointe *et al.* 2009, pp. 408; 411–412; LaPointe *et al.* 2012, p. 215).

Efforts to restore and manage large, contiguous tracts of native forests have been shown to benefit iiwi, especially when combined with fencing and ungulate removal (LaPointe *et al.* 2009, p. 412; LaPointe *et al.* 2012, p. 219). While forest restoration and ungulate management at the Hakalau Forest NWR on Hawaii Island are excellent examples of what is needed to increase iiwi abundance, many similar large-scale projects would be necessary rangewide to simply reduce mosquito abundance and protect the species from current habitat threats alone. However, even wide-scale landscape habitat management would be unable to fully address the present scope of the threat of disease, and sufficient high-elevation forest is not available to provide disease-free habitat for iiwi in the face of future climate change. Even if disease-free habitat within managed areas could be restored and protected now, much of this habitat will lose its disease-free status as avian malaria moves upward in elevation in response to warming temperatures, as is occurring already within the Alakai Wilderness on the island of Kauai.

New opportunities are emerging, such as large-scale vector control using new genetics technology, that have the potential to assist Hawaiian forest birds (LaPointe *et al.* 2009, pp. 416–417; Reeves *et al.* 2014, p. e97557; Gantz *et al.* 2015, pp. E6736–E6743). These tools include the potential introduction of sterile male mosquitoes and transgenic insect techniques that introduce new genetic material into mosquito populations, including self-sustaining genes that will help drive an increase of the new desirable trait, *i.e.,* inability or decreased ability to transmit diseases throughout a mosquito population, thereby improving long-term transmission control. While promising, our report concludes that these new technologies for achieving large-scale control or eradication of mosquitoes in Hawaii are still in the research and planning stage and have yet to be implemented or proven effective.

Our species status report also evaluated several regulations and agreements pertaining to climate change. Although the United States and some other countries have passed some regulations specifically intended to reduce the emission of greenhouse gases that contribute to climate change, the scope and effect of such regulations are limited. Indeed, during the United Nations Framework Convention on Climate Change (UNFCCC) meeting in December 2015, the UNFCCC indicated that, even if all the member countries' intended contributions to greenhouse gas reductions were fully implemented and targets met, the goal of limiting the increase in global average temperature to 2 °C (3.6 °F) by the year 2100 would not be achieved.

Many of the efforts to tackle the primary stressors to iiwi are still in the research and development stage, or are implemented only on a small or limited scale. Because the primary stressor, avian malaria, continues to have negative impacts, and these impacts are exacerbated by climate change, we must conclude that no current conservation measures or regulations are sufficient to offset these impacts to the species.

Summary of Biological Status and Threats

We have reviewed the best scientific and commercial data available regarding iiwi populations and the stressors that affect the species. This information includes, notably, a recent comprehensive analysis of iiwi abundance, distribution, and population trends (Paxton *et al.* 2013); numerous studies that provide information on the particularly high mortality of iiwi in response to avian malaria; and recent models examining the current relationship between climate and malaria, as well as the likely future consequences of climate change for iiwi and other Hawaiian forest birds (including Benning *et al.* 2002, Fortini *et al.* 2013, and Liao *et al.* 2015). Our review also reflects the expert opinion of the species' status report team members, and input provided by specialists familiar with avian malaria and iiwi genetics. We direct the reader to the draft iiwi species status report for our detailed evaluation of the biological status of the iiwi and the influences that may affect its continued existence.

Once one of the most common of the native Hawaiian forest birds, the iiwi has declined across large portions of its range, has been extirpated or nearly so from some islands, and many of the few remaining populations are declining. The iiwi's range is contracting upslope in most areas, and population declines and range contraction are concurrent with increasing prevalence of avian malaria. Clear evidence exists that the iiwi is highly susceptible to avian malaria, and that the prevalence of this disease is moving upslope in Hawaiian forests correlated with temperature increases associated with global climate change. The evidence suggests this disease and its trend of increasing prevalence at increasing elevation are the chief drivers of observed iiwi population declines and range contraction. Although habitat management to reduce breeding habitat for mosquitoes may have slowed the decline of iiwi and other forest birds to some degree in a few locations, no landscape-scale plans or strategies exist for eradicating mosquitoes or otherwise reducing the risk posed by avian malaria to iiwi and other susceptible Hawaiian bird species.

The documented trend of temperature increase, which is greatest at high elevation, is projected to continue at least through the 21st century. The transmission of avian malaria is currently limited or absent at higher elevations, where temperatures are too cool for the development of the malaria parasite. However, multiple independent modeling efforts consistently project that the prevalence of avian malaria will continue to increase upslope with increasing temperature, eventually eliminating most or all remaining disease-free habitat in the islands. These models, which incorporate data on the distribution of forest birds and on disease transmission, project moderate to high avian malaria transmission at the highest elevations of the iiwi's current range by the end of this century, with some significant effects predicted within the next few decades. As a consequence, significant declines in iiwi populations are projected, on the order of 70 to 90 percent by 2100, depending on the future climate scenario.

The impacts of other stressors to iiwi, such as loss or degradation of native forest by nonnative species (disturbance or destruction by feral ungulates; invasion by nonnative plants; impacts from nonnative pathogens such as ROD), predation by rats and other nonnative predators, and small-population stressors such as demographic stochasticity and loss of genetic diversity, have not been well documented or quantified. However, any stressors that result in further degradation or fragmentation of the forests on which the iiwi relies for foraging and nesting, or result in increased mortality or reduced reproductive success, are likely to exacerbate the impacts of disease on the species. The effects of climate change are likely to exacerbate these other stressors to iiwi as well.

As the number and distribution of iiwi continue to decline, the remaining small, isolated populations become increasingly vulnerable to environmental catastrophes and demographic stochasticity; this will particularly be the case should all remaining iiwi become restricted to Hawaii Island, as some modeling scenarios suggest. Ninety percent of the rangewide iiwi population is already restricted to Hawaii Island, where ROD has recently emerged as a fast-moving threat to the already limited ohia forest habitat required by iiwi.

In consideration of all of this information, we conclude that avian malaria, as exacerbated by the ongoing effects of climate change, poses a threat to iiwi, and the action of these stressors places the species as a whole at an elevated risk of extinction. Because the vast majority of the remaining iiwi population is restricted to the island of Hawaii, we consider rapid ohia death to pose a threat to the future viability of iiwi as well, as it may result in major loss of forest within the iiwi's remaining range on that island.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in title 50 of the Code of Federal Regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the iiwi. As described in the species status report, in considering the five listing factors, we evaluated many potential stressors to iiwi, including but not limited to: Stressors that may affect the extent or quality of the bird's ohia forest habitat (ohia dieback, ohia rust, ROD, drought, fires, volcanic eruptions, nonnative plants, and feral ungulates), introduced diseases, predation by introduced mammals, competition with nonnative birds, ectoparasites, climate change, and the effects of small population size. Based on our assessment, disease—particularly avian malaria—is the primary driver in the ongoing declines in abundance and range of iiwi, and climate change substantially exacerbates the impact of disease on the species and will continue to do so into the future.

The greatest current threat to iiwi comes from exposure to introduced diseases carried by nonnative mosquitoes (Factor C). Avian malaria in particular has been clearly demonstrated to result in extremely high mortality of iiwi; avian pox may have significant effects on iiwi as well, although the evidence is not as clear or measurable. These diseases have resulted in significant losses of the once ubiquitous iiwi, which remains highly susceptible and, as of present, shows no clear indication of having developed substantial resistance or tolerance. Exposure to these diseases is ongoing, and is expected to increase as a consequence of the effects of climate change (Factor E).

Several climate model projections predict that continued increases in temperature due to climate change will greatly exacerbate the impacts of avian diseases upon iiwi due to loss of disease-free habitat. Several iiwi populations, including those on Molokai, Kauai, West Maui, and possibly Oahu—all lower in elevation than East Maui and Hawaii Island—are already extremely small in size or are represented by only a few occasional individuals, probably owing to the loss of disease-free habitat. Iiwi may face extirpation in these places due to the inability to overcome the effects of malaria. The species is expected to first become restricted to Hawaii Island, perhaps by the year 2040. By the end of the century, the existence of iiwi is uncertain due to the ongoing loss of disease-free habitat; the potential impacts to ohia forests from ROD and other stressors could increase the risk to iiwi as well. These threats to iiwi are ongoing, most are rangewide, are expected to increase in the future, and are significant because they will likely result in increased mortality of iiwi and loss of remaining populations, as well as further decreases in the availability and amount of disease-free habitat at high elevation. As discussed above, current regulatory mechanisms are not sufficient to address these threats (Factor D).

Some of the other stressors contributed to past declines in iiwi, or negatively affect the species or its habitat today; however, of the additional stressors considered, we found no information to suggest that any is currently a key factor in the ongoing declines in abundance and range of iiwi, although they may be contributing or exacerbating factors. Habitat loss and alteration (Factor A) caused by nonnative plants and ungulates is occurring rangewide, has resulted in degraded ohia forest habitat, and is not likely to be reduced in the future. While ohia forests still comprise the majority of native forest cover on most of the main Hawaiian Islands, climate change and its likely effects, such as increased drought frequency, are expected to further affect ohia forest habitat and compound other impacts, including the spread of invasive plants and perhaps the severity and frequency of ohia diseases. In particular, the rapidly spreading and highly lethal disease, rapid ohia death, poses an increasing risk to the native forest habitat of iiwi on Hawaii Island, where 90 percent of remaining iiwi occur. This emerging factor has the potential to exacerbate avian disease and other stressors in the future by accelerating the loss and degradation of iiwi's habitat. If this disease becomes widespread, it could further increase the vulnerability of the iiwi by eliminating the native forest it requires for foraging and nesting.

We do not have any information that overutilization for commercial, recreational, scientific, or educational purposes (Factor B) poses a threat to iiwi.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We considered whether the iiwi meets either of these definitions, and find that the iiwi meets the definition of a threatened species for the reasons described below.

We considered whether the iiwi is presently in danger of extinction and determined that proposing endangered status is not appropriate. Although the species has experienced significant reductions in both abundance and range, at the present time the species is still found on multiple islands and the species as a whole still occurs in relatively high numbers. Additionally, disease-free habitat currently remains available for iiwi in high-elevation ohia forests with temperatures sufficiently cool to prevent the development of the malarial parasite. For these reasons, we do not consider the iiwi to be in imminent danger of extinction, although this formerly common species has experienced threats of such severity and magnitude that it has now become highly vulnerable to continued decline and local extirpation, such that the species is likely to become endangered within the foreseeable future, as explained below.

Based on our review of the best scientific and commercial data available, we expect that additional iiwi population declines will be observed range-wide within the next few decades, and indications are that declines are already taking place on Kauai and in some Maui and Hawaii Island populations as a result of increasing temperatures and consequent exposure to avian malaria at some elevations where the disease is uncommon or absent today. Iiwi has a very high observed mortality rate when exposed to avian malaria, and the warming effects of climate change will result in increased exposure of the remaining iiwi populations to this disease, especially at high elevation. Peer-reviewed results of modeling experiments project that malaria transmission rates and effects on iiwi populations will begin increasing at high elevations by mid-century, and result in population declines of 70 to 90 percent by the year 2100. We thus conclude that the iiwi is likely to become in danger of extinction throughout all of its range within the foreseeable future. Because the iiwi is not in imminent danger of extinction, but is likely to become in danger of extinction within the foreseeable future, it meets the definition of a threatened species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the iiwi as threatened in accordance with sections 3(20) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the iiwi is threatened throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577; July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition from listing will result in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and other qualified persons) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan for iiwi will be available on our Web site (*http://www.fws.gov/endangered*), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). The public will have an opportunity to comment on the draft recovery plan, and the Service will consider all information presented during the public comment period prior to approval of the plan.

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Hawaii would be eligible for Federal funds to implement management actions that promote the protection or recovery of the iiwi. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the iiwi is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the iiwi's habitat that may require a conference or consultation or both as described in the preceding paragraph, include but are not limited to, management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service; actions within the jurisdiction of the Natural Resources Conservation Service, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the Department of Defense (DOD); and activities funded or authorized under the Federal Highway Administration, Partners for Fish and Wildlife Program, and DOD construction activities related to training or other military missions.

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened species. We are not proposing to issue a special rule pursuant to section 4(d) for this species. Therefore, the provisions of 50 CFR 17.31(a) and (b) would apply. These regulatory provisions apply the prohibitions of section 9(a)(1) of the Act to threatened wildlife and make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, actions that may result in a violation of section 9 include but are not limited to:

(1) Development of land or the conversion of native ohia forest, including the construction of any infrastructure (*e.g.,* roads, bridges, railroads, pipelines, utilities) in occupied iiwi habitat;

(2) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of this species at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) Introduction of nonnative species that compete with or prey upon the iiwi, such as the new introduction of nonnative predators or competing birds to the State of Hawaii; and

(4) Certain research activities: Collection and handling of iiwi for research that may result in displacement or death of individuals.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2016–0057 and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Pacific Islands Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h), add an entry for "Iiwi (honeycreeper)" to the List of Endangered and Threatened Wildlife in alphabetical order under BIRDS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* *	*	* *		* *
Iiwi (honeycreeper)	*Drepanis coccinea*	Wherever found	T	[**Federal Register** citation when published as a final rule].
* *	*	* *		* *

Dated: September 2, 2016.

Bryan Arroyo,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–22592 Filed 9–19–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–XE888

Mid-Atlantic Fishery Management Council (MAFMC); New England Fishery Management Council (NEFMC); Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils are developing an omnibus amendment to allow for industry-funded monitoring. This amendment includes omnibus alternatives that would modify all the fishery management plans managed by the Mid-Atlantic and New England Fishery Management Councils to allow for standardized and streamlined development of future industry-funded monitoring programs. Additionally, this amendment includes alternatives for new industry-funded monitoring programs for the Atlantic Herring Fishery Management Plan and the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

DATES: Written comments on the Industry-Funded Monitoring Omnibus Amendment (IFM Amendment) will be accepted from Friday, September 23, 2016, until Monday, November 7, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0125,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments;
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on IFM Omnibus Amendment;"
- Comments may also be provided verbally at any of the five public hearings. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, Fishery Management Specialist, (978) 282–8457. The IFM Amendment will be available on the NMFS Greater Atlantic Regional Office Web site (*www.greateratlantic.fisheries.noaa.gov*) and the Council Web sites (*www.mafmc.org, www.nefmc.org*) starting on September 23, 2016. In addition, please visit any of the Web sites for details on meeting locations, webinar listen-in access, and public hearing materials.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic and the New England Fishery Management Councils have initiated an amendment to allow for industry-funded monitoring in all of the fishery management plans managed by the Councils. The industry-funded monitoring would be used to assess the amount and type of catch, more precisely monitor annual catch limits, and provide other information for management. This increased monitoring would be above coverage required under the standardized bycatch reporting methodology, the Endangered Species Act, or the Marine Mammal Protection Act. The amount of available Federal funding to support additional monitoring and legal constraints associated with sharing the costs of industry-funded monitoring between NMFS and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries.

The Omnibus Alternatives consider the following for new industry-funded monitoring programs: (1) Standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry; (2) a process for fishery management plan-specific industry-funded monitoring to be implemented via a future framework adjustment action; (3) standard administrative requirements for industry-funded monitoring service providers; (4) a process to prioritize industry-funded monitoring programs in order to allocate available Federal resources across all fishery management plans; and (5) a process for monitoring set-aside programs to be implemented via a future framework adjustment action.

This amendment also includes industry-funded monitoring coverage target alternatives for the Atlantic herring and mackerel fisheries. Specifically, this amendment considers a variety of monitoring types and coverage targets to address the following goals: (1) Accurate estimates of catch (retained and discarded); (2) accurate catch estimates for incidental species for which catch caps apply; and (3) effective and affordable monitoring for the herring and mackerel fisheries.

Public Hearings

The dates and locations of the public hearings are as follows.

- *Tuesday, October 4, 2016, 6–8 p.m.,* Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone: (978) 281–9300;
- *Monday, October 17, 2016, 5–7 p.m.,* Internet webinar, connection information to be available at (*http://mafmc.adobeconnect.com/ifm-hearing/*) or by contacting NMFS or either Council at the above addresses.
- *Thursday, October 20, 2016, 6–8 p.m.,* Double Tree by Hilton Hotels, 363 Maine Mall Road, Portland, ME 04106, telephone: (207) 775–6161;
- *Thursday, October 27, 2016, 5–7 p.m.,* Congress Hall, 200 Congress Place, Cape May, NJ 08204, telephone: (888) 944–1816;
- *Tuesday, November 1, 2016, 6–8 p.m.,* Corless Auditorium, Watkins Building University of Rhode Island Graduate School of Oceanography, 218 Ferry Road, Narragansett, RI 02874.

Special Accommodations

These public hearings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Dr. Fiona Hogan (NEFMC) at *fhogan@nefmc.org,* (978) 465–0492 (x121), or Jason Didden (MAFMC) at *jdidden@mafmc.org,* (302) 526–5254, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 14, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22493 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 182
Tuesday, September 20, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Docket No. FCIC–16–0005]

Notice of Request for Extension of a Currently Approved Information Collection—Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with the Subpart U—Ineligibility for Programs under the Federal Crop Insurance Act.

DATES: Comments that we receive on this notice will be accepted until close of business November 21, 2016.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–16–0005, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Title: Subpart U—Ineligibility for Programs under the Federal Crop Insurance Act.

OMB Control Number: 0563–0085.

Expiration Date of Approval: March 31, 2017.

Type of Request: Notice of Request for Extension of a Currently Approved Information Collection.

Abstract: The following mandates require FCIC to identify persons who are ineligible to participate in the Federal crop insurance program administered under the Federal Crop Insurance Act.

(1) Section 1764 of the Food Security Act of 1985 (Pub. L. 99–198);

(2) 21 U.S.C., Chapter 13;

(3) Section 14211 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246);

(4) Executive Order 12549; and

(5) 7 U.S.C. 1515.

The FCIC and Approved Insurance Providers (AIPs) use the information collected to determine whether persons seeking to obtain Federal crop insurance coverage are ineligible for such coverage according to the aforementioned mandates. The purpose of collecting the information is to ensure persons that are ineligible for benefits under the Federal crop insurance program are accurately identified as such and do not obtain benefits to which they are not eligible.

FCIC and RMA do not obtain information used to identify a person as ineligible for benefits under the Federal crop insurance program directly from the ineligible person. AIPs notify RMA of persons with a delinquent debt electronically through a secure automated system. RMA (1) sends written notification to the person informing them they are ineligible for benefits under the Federal crop insurance program; and (2) places that person on the RMA Ineligible Tracking System until the person regains eligibility for such benefits.

RMAs Office of General Counsel notifies RMA in writing of persons convicted of controlled substance violations. RMA (1) sends written notification to the person informing them they are ineligible for benefits under the Federal crop insurance program; and (2) places that person on RMAs Ineligible Tracking System until the person regains eligibility for such benefits.

Persons debarred, suspended or disqualified by RMA are (1) notified, in writing, they are ineligible for benefits under the Federal crop insurance program; and (2) placed on RMAs Ineligible Tracking System until the person regains eligibility for such benefits. Information identifying persons who are ineligible for benefits under the Federal crop insurance program is made available to all AIPs through RMAs Ineligible Tracking System. The Ineligible Tracking System is an electronic system, maintained by RMA, which identifies persons who are ineligible to participate in the Federal crop insurance program. The information must be made available to all AIPs to ensure ineligible persons cannot circumvent the mandates by switching from one AIP to another.

In addition, information identifying persons who are debarred, suspended or disqualified by RMA is provided to the General Services Administration to be included in the Excluded Parties List System, an electronic system maintained by the General Services Administration that provides current information about persons who are excluded or disqualified from covered transactions.

Additionally, due to the Agricultural Act of 2014 (H.R. 2642; Pub. L. 113–79) there is an increase in reporting of information from those producers who are determined to be ineligible and who submit a request for reinstatement to the Administrator of the Risk Management Agency, for their inadvertent failure to pay their crop insurance debt timely to the applicable Approved Insurance Provider.

Estimate of burden: Reporting burden for the collection and transmission of information by AIPs is estimated to average 19 minutes per response.

Respondents: Approved Insurance Providers (AIPs).

Estimated number of respondents: 18 AIPs.

Estimated number of forms per respondent: All information is obtained electronically from AIPs.

Estimated total annual responses: 9,270 total from all respondents.

Estimated total annual respondent burden: 2,948 total from all respondents.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) enhance the quality, utility and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on September 14, 2016.

Timothy J. Gannon,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2016–22579 Filed 9–19–16; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Docket No. FCIC–16–0004]

Notice of Request for Extension of a Currently Approved Information Collection—Area Risk Protection Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with the Area Risk Protection Insurance.

DATES: Comments that we receive on this notice will be accepted until close of business November 21, 2016.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–16–0004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816)823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Title: Area Risk Protection Insurance.

OMB Number: 0563–0083.

Expiration Date of Approval: March 31, 2017.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection requirements for this renewal package are necessary to administer the Area Risk Protection Insurance (ARPI) Basic Provisions and affected Crop Provisions to determine insurance coverage, premiums, subsidies, payments and indemnities. ARPI is an insurance plan that provides coverage based on the experience of an entire county. Producers are required to report specific data when they apply for ARPI such as acreage and yields. Insurance companies accept applications; issue policies; establish and provide insurance coverage; compute liability, premium, subsidies, and losses; indemnify producers; and report specific data to FCIC as required in Appendix III/M13 Handbook. Commodities for which ARPI is available are included in this information collection package.

FCIC is requesting the Office of Management and Budget (OMB) to extend the approval of this information collection for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond (such as through the use

of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.65 of an hour per response.

Respondents/Affected Entities: Producers and insurance providers reinsured by FCIC.

Estimated Annual Number of Respondents: 25,432.

Estimated Annual Number of Responses per Respondent: 5.9.

Estimated Annual Number of Responses: 150,173.

Estimated Total Annual Burden on Respondents: 98,332.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on September 14, 2016.

Timothy J. Gannon,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2016–22577 Filed 9–19–16; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Submission for OMB Review; Comment Request

September 15, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by October 20, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Application and Permit for Non-Federal Commercial Use of Roads, Trails and Areas Restricted by Regulation or Order.

OMB Control Number: 0596–0016.

Summary of Collection: Authority for permits for use of National Forest System (NFS) roads, trails, and areas on NFS lands restricted by order or regulation drives from the National Forest Roads and Trails Act (16 U.S.C. 532–538). The authority for the Road Use Permit process comes from 36 CFR 212.5, 36 CFR 212.9 and 36 CFR 261.54 Section 212.9 authorizes the Forest Service (FS) to develop a road system with private holders that is mutually beneficial to both parties. The FS transportation system includes approximately 380,000 miles of roads. These roads are grouped into five maintenance levels. Level one includes roads, which are closed and maintained only to protect the environment to level five, which is maintained for safe passenger car use. The roads usually provide the only access to commercial products including timber and minerals found on both Federal and private lands within and adjacent to National Forests. Annual maintenance not performed becomes a backlog that creates a financial burden for the FS. To remedy the backlog and pay for needed maintenance the FS requires commercial users to apply and pay for a permit to use the FS Road System. Maintenance resulting from commercial use is accomplished through collection of funds or requiring the commercial users to perform the maintenance.

Need and Use of the Information: Information is collected from individuals, corporations, or organizations on the FS–7700–40 "Application for a Permit for Use of Roads, Trails and Areas Restricted by Regulation or Order" along with FS–7700–40a "Commercial Use Attachment" or FS–7700–40b "Oversize Vehicle Attachment" if applicable. The forms provide identifying information about the applicant such as, the name; address; and telephone number; description of mileage of roads; purpose of use; use schedule; and plans for future use. FS will use the information to prepare the applicant's permit, FS–7700–41 or FS–7700–48, to identify the road maintenance that is the direct result of the applicant's traffic, to calculate any applicable collections for recovery of past Federal investments in roads and assure that the requirements are met. Without the Road Use Permit, the backlog of maintenance would increase and the FS would have great difficulty providing the transportation system necessary to meet our mission.

Description of Respondents: Business or other for-profit; Individuals or households; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 1,100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 163.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–22552 Filed 9–19–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee for a New Committee Orientation Meeting, To Discuss Civil Rights Issues in the State, and To Plan Future Activities

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Tuesday, October 4, 2016, at 4:00 p.m. CDT. The meeting will include an orientation for new members, a discussion of completion and publication of the Committee's report regarding voting rights in the state, and a discussion of other current civil rights concerns in Kansas for future consideration.

DATES: The meeting will take place on Tuesday, October 4, 2016, at 4:00 p.m. CDT Public Call Information: Dial: 888–601–3864, Conference ID: 7006235.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–601–3864, conference ID: 7006235. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda:

Welcome and Introductions
New Member Orientation
Discussion of Committee Report: Voting Rights in Kansas
Public Comment
Civil Rights in Kansas
Future Plans and Actions
Adjournment

Dated: September 14, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–22501 Filed 9–19–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee To Discuss a Project Proposal To Study Civil Rights and Voter Participation in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Friday, October 14, 2016, at 12:00 p.m. CDT for the purpose of discussing a draft project proposal for a study regarding civil rights and voter participation in the state.

DATES: The meeting will be held on Friday, October 14, 2016, at 12:00 p.m. CDT.

ADDRESSES: Public call information: Dial: 888–466–4462, Conference ID: 9902935.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–466–4462, conference ID: 9902935. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=246*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda:

Welcome and Introductions
Discussion of Project Proposal: Voting Rights in Illinois
Public Comment
Future Plans and Actions
Adjournment

Dated: September 14, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–22502 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 160831809–6809–01]

Temporary Suspension of the Special Census Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Temporary Suspension of the Special Census Program.

SUMMARY: This document serves as notice to state and local governments and to other federal agencies that, beginning on September 30, 2018, the Bureau of the Census (Census Bureau) will temporarily suspend the Special Census Program for five years—the two years preceding the decennial census, the decennial census year and the two years following it to accommodate the taking of the 2020 Decennial Census.

The Census Bureau will announce, in a future **Federal Register** notice, the date that the program resumes. The Census Bureau plans to resume the program in the year 2022, after the 2020 Census data becomes available, for those entities that desire the service, provided that any and all costs associated with this work are borne by the local governmental entity.

DATES: As of September 30, 2018, the Special Census Program will be temporarily suspended. Governmental units wishing to conduct a special census prior to the temporary suspension must submit the necessary Cost Estimate Package by June 15, 2017. An approved Memorandum of Agreement (MOA), along with the required funding, must be received no later than September 30, 2017 to complete the jurisdiction's Special Census by September 30, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Hector Merced, Field Division, U.S. Census Bureau, Washington, DC 20233, by telephone at (301) 763–1429 or email at *fld.special.census@census.gov*.

SUPPLEMENTARY INFORMATION: A Special Census is a basic enumeration of population, housing units, group quarters and transitory locations, conducted by the Census Bureau at the request of a governmental unit. They are conducted on a cost-reimbursable basis. The Census Bureau's authority to conduct Special Censuses is specified in Title 13, United States Code (U.S.C.), Section 196. For Special Census purposes, a governmental unit is defined as the government of any state, county, city, or other political subdivision within a state, or the government of the District of Columbia or the government of any possession or area including political subdivisions, American Indian Reservations or Alaskan Native villages.

A Special Census may be conducted on any subject covered by the censuses as provided for in Title 13, U.S.C. Special Censuses are conducted on a cost reimbursable basis. The cost of a Special Census varies depending on the governmental unit's housing and population counts and whether a government requests a full or partial Special Census. To begin the Special Census process, a governmental unit must request an official cost estimate. There is a $200 fee to request an estimate. The cost estimate outlines the anticipated costs to the sponsoring government for staffing, materials, data processing and tabulation. Included with the cost estimate is a MOA. Once a signed MOA and initial payment are transmitted to the Census Bureau, the Special Census process will begin. When data collection, processing, and tabulation have been completed, the governmental unit receives official census statistics on the population and housing unit counts for the entire jurisdiction or parts of the jurisdiction, as defined in the MOA at the beginning of the Special Census process. This typically occurs within seven (7) months after the MOA is signed and returned to the Census Bureau by the requesting government. The official census statistics are communicated to the jurisdiction through a signed letter from the Director of the Census Bureau. The official census statistics can be used by the jurisdiction for any purpose provided through law, as specified in Title 13, U.S.C., Section 196.

Local officials frequently request a Special Census when there has been a significant population change in their community due to annexation, growth, or the addition of new group quarters facilities. Communities may also consider a Special Census if there was a significant number of vacant housing units during the previous Decennial Census that are now occupied.

Governmental units wishing to conduct a special census prior to the temporary suspension must submit the necessary Cost Estimate Package by June 15, 2017. An approved MOA, along with the required funding, must be received no later than September 30, 2017 to complete the jurisdiction's Special Census by September 30, 2018. Additional information about the Special Census Program is located at the following Web site address: *www.census.gov/programs-surveys/specialcensus.html*.

Dated: September 14, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–22629 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–843, A–533–865, A–580–881, A–412–824]

Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (the ITC), the Department is issuing antidumping duty (AD) orders on certain cold-rolled steel flat products (cold-rolled steel) from Brazil, India, the Republic of Korea (Korea), and the United Kingdom. In addition, the Department is amending its final determinations of sales at less-than-fair value (LTFV) from Brazil and the United Kingdom, to correct ministerial errors.

DATES: Effective September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla at (202) 482–3477 (Brazil); Patrick O'Connor at (202) 482–0989 (India); Victoria Cho at (202) 482-5075 (Korea); or Thomas Schauer at (202) 482–0410 (the United Kingdom), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), on July 29, 2016, the Department made final determinations that cold-rolled steel from Brazil, India, Korea, Russia, and the United Kingdom is being sold in the United States at less-than-fair value.[1]

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[1] *See Certain Cold-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value,* 81 FR 44946 (July 29, 2016) (*Brazil Final*); *Certain Cold-Rolled Steel Flat Products From India: Final Determination of Sales at Less Than Fair Value;* 81 FR 49938 (July 29, 2016) (*India Final*); *Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 81 FR 49953 (July 29, 2016) (*Korea Final*); *Certain Cold-Rolled Steel Flat Products From the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 49950 (July 29, 2016) (*Russia Final*); and *Certain Cold-Rolled Steel Flat Products From the United*

On July 29, 2016, U.S. Steel, one of the petitioners,[2] submitted a timely filed allegation that the Department made certain ministerial errors in calculating the weighted-average dumping margin for Companhia Siderurgica Nacional (CSN) in the *Brazil Final.* We reviewed U.S. Steel's allegations and determined that we made certain ministerial errors. *See* "Amendment to the Brazil and United Kingdom Final Determinations" section below for further discussion.

On July 27 and 29, 2016, Tata Steel UK Ltd. (TSUK) and AK Steel, one of the petitioners, submitted timely filed allegations that the Department made certain ministerial errors in calculating the weighted-average dumping margin for TSUK in the *UK Final.* We reviewed the allegations and determined that we made certain ministerial errors. *See* "Amendment to the Brazil and United Kingdom Final Determinations" section below for further discussion.

On September 12, 2016, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of certain cold-rolled steel flat products from Brazil, India, the Republic of Korea, and the United Kingdom.[3] In the same letter, the ITC notified the Department of its negative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of certain cold-rolled steel flat products from Russia.[4]

Scope of the Orders

The product covered by these orders is certain cold-rolled steel flat products. For a complete description of the scope of these orders, *see* Appendix I.

Amendment to the Brazil and United Kingdom Final Determinations

As discussed above, after analyzing the comments received from U.S. Steel, we determined, in accordance with section 735(e) of the Act and and 19 CFR 351.224(f), that we made ministerial errors with regard to CSN's margin program by incorrectly referencing two variable names in revising the company's further manufacturing cost for its U.S. sales. This amended final AD determination corrects these ministerial errors. In addition, because the Department used CSN's final margin as the all-others rate, the amended final AD determination also revises the "all-others" rate accordingly. The dumping margins reported in this notice reflect the correction of these ministerial errors.

As discussed above, after analyzing the comments received from TSUK and AK Steel, we determined, in accordance with section 735(e) of the Act and and 19 CFR 351.224(f), that we made ministerial errors with respect to the calculation of a partial adverse facts available market price used for the transactions disregarded analysis of TSUK's affiliated electricity purchases. This amended final AD determination corrects those errors. In addition, because the Department calculated the "all-others" rate based on a weighted average of the respondents' margins using publicly-ranged quantities for their sales of subject merchandise, this amended final AD determination also revises the all-others rate accordingly. The dumping margins reported in this notice reflect the correction of these ministerial errors.

Antidumping Duty Orders

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC has notified the Department of its final determinations that an industry in the United States is materially injured by reason of LTFV imports of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom.[5] Therefore, in accordance with section 735(c)(2) of the Act, we are publishing these AD orders. Because the ITC determined that LTFV imports of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom are materially injuring a U.S. industry, unliquidated entries of such merchandise from Brazil, India, Korea, and the United Kingdom, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom. Antidumping duties will be assessed on unliquidated entries of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after March 7, 2016, the date of publication of the preliminary determinations,[6] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation on all relevant entries of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amounts as indicated below, adjusted for certain countervailable subsidies, where appropriate. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[7] The relevant all-others rates apply to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from Brazil, India, and

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Kingdom: Final Determination of Sales at Less Than Fair Value, 81 FR 49929 (July 29, 2016) (*UK Final*).

[2] AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (U.S. Steel) (collectively, the petitioners).

[3] *See* Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Irving A. Williamson, Chairman of the U.S. International Trade Commission, regarding certain cold-rolled steel flat products from Brazil, India, Korea, Russia, and the United Kingdom (September 12, 2016) (ITC Letter). *See also Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and the United Kingdom* (Investigation Nos. 701–TA–540–544 and 731–TA–1283–1290 (Final), USITC Publication 4564, September 2016).

[4] *Id.*

[5] *See* ITC Letter.

[6] *See Certain Cold-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 81 FR 11754 (March 7, 2016) (*Brazil Prelim*); *Certain Cold-Rolled Steel Flat Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 11741 (March 7, 2016) (*India Prelim*); *Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 11757 (March 7, 2016) (*Korea Prelim*); and *Certain Cold-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 11744 (March 7, 2016) (*UK Prelim*).

[7] *See* section 736(a)(3) of the Act.

Korea, have been adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigations of this merchandise imported from Brazil, India, and Korea.[8]

BRAZIL

Exporter/Producer	Weighted-average margin (percent)	Cash-deposit rate (percent)[9]
Companhia Siderurgica Nacional	19.58	15.49
Usiminas Siderurgicas de Minas Gerais S.A. (Usiminas)	35.43	31.66
All-Others	19.58	15.49

INDIA

Exporter/Producer	Weighted-average margin (percent)	Cash-deposit rate (percent)[9]
JSW Steel Limited/JSW Coated Products Limited	7.60	6.70
All-Others	7.60	6.70

REPUBLIC OF KOREA

Exporter/Producer	Weighted-average margin (percent)	Cash-deposit rate[9]
Hyundai Steel Company	34.33	34.33
POSCO and Daewoo International Corporation	6.32	0.00
All-Others	20.33	20.33

UNITED KINGDOM

Exporter/Producer	Weighted-average margin (percent)
Caparo Precision Strip, Ltd./ Liberty Performance Steels Ltd.	5.40
Tata Steel UK Ltd.	25.17
All-Others	22.58

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom, we extended the four-month period to six months in each case.[10] In the underlying investigations, the Department published the preliminary determinations on March 7, 2016. Therefore, the extended period, beginning on the date of publication of the preliminary determinations, ended on September 2, 2016. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of certain cold-rolled steel flat products from Brazil, India, Korea, and the United Kingdom entered, or withdrawn from warehouse, for consumption after September 2, 2016, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the AD orders with respect to cold-rolled steel from Brazil, India, Korea, and the United Kingdom, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B8024 of the main Commerce building, for copies of an updated listed of AD orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: September 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Orders

The products covered by these orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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[8] *See Brazil Final*, 81 FR at 49947–8, *India Final*, 81 FR at 49939, and *Korea Final*, 81 FR at 49954–5. *See also* section 772(c)(1)(C) of the Act.

[9] The cash deposit rates are adjusted to account for the applicable export subsidy rates.

[10] *See Brazil Prelim*, *India Prelim*, *Korea Prelim*, and *UK Prelim*.

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

- Ball bearing steels;[11]
- Tool steels;[12]
- Silico-manganese steel;[13]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.[14]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[15]

The products subject to these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to these orders may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

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DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold an open meeting via teleconference on Tuesday, October 4, 2016. The Board was re-chartered in August 2015 and advises the Secretary of Commerce on matters relating to the U.S. travel and

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[11] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[12] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[13] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[14] *See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[15] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741–42 (December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

tourism industry. The purpose of the meeting is for Board members to review and discuss proposed recommendations related to travel security and the customer experience, visa facilitation, and the collection of international visitation data to the United States. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://trade.gov/ttab,* at least one week in advance of the meeting.

DATES: Tuesday, October 4, 2016, 3 p.m.–5 p.m. EDT. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on September 27, 2016.

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Travel and Tourism Advisory Board, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *OACIO@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Li Zhou, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *OACIO@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATES caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on Tuesday, September 27, 2016, for inclusion in the meeting records and for circulation to the members of the Travel and Tourism Advisory Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Li Zhou at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on Tuesday, September 27, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: September 14, 2016.

Li Zhou,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2016–22608 Filed 9–19–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–844, C–533–866, C–580–882]

Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing countervailing duty (CVD) orders on certain cold-rolled steel flat products (cold-rolled steel) from Brazil, India, and the Republic of Korea (Korea). In addition, the Department is amending its final affirmative determination with respect to Korea to correct the rates assigned to Hyundai Steel Co., Ltd. (Hyundai Steel), POSCO, and All Others.

DATES: Effective September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin at (202) 482–6478 (Brazil); Robert Bolling at (202) 482–3434 (India); and Emily Maloof at (202) 482–5649 (Korea); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(a) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), on July 20, 2016, the Department made final determinations that countervailable subsidies are being provided to producers and exporters of cold-rolled steel from Brazil, India, and Korea. Pursuant to section 705(d) of the Act, the Department published the affirmative final determinations on July 29, 2016.[1]

On July 27, 2016, Usinas Siderurgicas de Minas Gerais S.A. (Usiminas) timely filed ministerial error comments, alleging that the Department made errors in the final determination of the CVD investigation of cold-rolled steel from Brazil. No other interested party submitted ministerial error allegations or rebuttals to Usiminas' submission. We analyzed the allegations submitted by Usiminas and determined that only one of the three alleged errors is a ministerial error, as defined by section 705(e) of the Act, and 19 CFR 351.224(f).[2] However, we determined that correcting the ministerial error within the calculations does not change the overall rate for Usiminas.[3]

On July 27, 2016, Hyundai Steel and POSCO timely filed ministerial error comments, alleging that the Department made errors in the final determination of the CVD investigation of cold-rolled steel from Korea. No other interested party submitted ministerial error allegations or rebuttals to Hyundai Steel's and POSCO's submissions. We analyzed the allegations submitted by

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[1] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination,* 81 FR 49940 (July 29, 2016) (*Brazil CVD Final Determination*); *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination,* 81 FR 49932 (July 29, 2016) (*India CVD Final Determination*); and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination,* 81 FR 49943 (July 29, 2016) (*Korea CVD Final Determination*).

[2] *See* Department Memorandum regarding "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Ministerial Error Allegation for the Final Determination," dated August 24, 2016 (Brazil Ministerial Error Decision Memorandum).

[3] *Id.*

Hyundai Steel and POSCO, and determined that ministerial errors exist, as defined by section 705(e) of the Act and 19 CFR 351.224(f).[4] *See* "Amendment to the Korea Final Determination" section below for further discussion.

On September 12, 2016, the ITC notified the Department of its final determinations that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from Brazil and Korea, within the meaning of section 705(b)(1)(A)(i) of the Act, and is threatened with material injury by reason of subsidized imports of subject merchandise from India, within the meaning of section 705(b)(1)(A)(ii) of the Act.[5]

Scope of the Orders

The products covered by these orders are certain cold-rolled steel flat products. For a complete description of the scope of the orders, *see* Appendix I.

Amendment to the Korea CVD Final Determination

As discussed above, after analyzing the comments received from Hyundai Steel and POSCO, we determined, in accordance with section 705(e) of the Act and 19 CFR 351.224(f), that we made ministerial errors with regard to certain calculations in the *Korea CVD Final Determination* with respect to Hyundai Steel and POSCO. This amended final CVD determination corrects these errors and revises the *ad valorem* subsidy rate for Hyundai Steel to 3.89 percent (from 3.91 percent), for POSCO to 59.72 percent (from 58.36 percent), and for the All Others rate to 3.89 percent (from 3.91 percent).[6]

Countervailing Duty Orders

In accordance with sections 705(b)(1)(A)(i), 705(b)(1)(A)(ii), and 705(d) of the Act, the ITC has notified the Department of its final determinations that the industry in the United States producing cold-rolled steel is materially injured by reason of subsidized imports of cold-rolled steel from Brazil and Korea, and is threatened with material injury by reason of subsidized imports of cold-rolled steel from India.[7] Therefore, in accordance with section 705(c)(2) of the Act, we are publishing these CVD orders.

Brazil

As a result of the ITC's final determinations, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of cold-rolled steel from Brazil entered, or withdrawn from warehouse, for consumption on or after December 22, 2015, the date on which the Department published its preliminary affirmative countervailing duty determinations in the **Federal Register**,[8] and before April 20, 2016, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of cold-rolled steel from Brazil made on or after April 20, 2016, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for assessment of countervailing duties due to the Department's discontinuation, effective April 20, 2016, of the suspension of liquidation.

India

According to section 706(b)(2) of the Act, countervailing duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based upon the threat of material injury, other than threat of material injury as described in section 706(b)(1) of the Act. Section 706(b)(1) of the Act states, "{i}f the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a)." In addition, section 706(b)(2) of the Act requires CBP to refund any cash deposits of estimated countervailing duties posted before the date of publication of the ITC's final affirmative determination, if the ITC's final determination is based on threat other than the threat described in section 706(b)(1) of the Act. Because the ITC's final determination with regard to imports of cold-rolled steel from India is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the publication of the Department's *India CVD Preliminary Determination* in the **Federal Register**,[9] section 706(b)(2) of the Act applies.

Korea

Because the Department's preliminary determination in the Korea CVD investigation was negative, we did not instruct CBP to discontinue the suspension of liquidation with regard to entries of cold-rolled steel from Korea.[10]

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[4] *See* Department Memorandum regarding "Countervailing Duty Investigation: Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response to Ministerial Error Comments filed by Hyundai Steel Co., Ltd. and POSCO," dated August 24, 2016 (Korea Ministerial Error Decision Memorandum).

[5] *See* Letter to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Irving A. Williamson, Chairman, U.S. International Trade Commission, regarding certain cold-rolled steel flat products from Brazil, India, Korea, Russia, and the United Kingdom (September 12, 2016) (ITC Letter); *see also* Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and the United Kingdom, USITC Investigation Nos. 701–TA–540, 542–544 and 731–TA–1283, 1285, 1287, and 1289–1290 (Final), USITC Publication 4637 (September 2016). The Department also issued an affirmative final CVD determination with regard to cold-rolled steel flat products from the Russian Federation, *see Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying Issues and Decision Memorandum. However, the ITC notified the Department that imports of cold-rolled steel from Russia that are subsidized by the Government of Russia are negligible.

[6] *See* Korea Ministerial Error Decision Memorandum. *See also* Department Memorandum regarding "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Amended Final Determination Calculation Memorandum for POSCO," dated August 24, 2016. The All Others rate has changed because it was determined by the rate calculated for Hyundai Steel, which has now been corrected. POSCO's final subsidy rate was excluded from the All Others rate because it was determined entirely under section 776 of the Act. *See* section 705(c)(5)(A)(i) of the Act.

[7] *See* ITC Letter.

[8] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79569 (December 22, 2015) (*Brazil CVD Preliminary Determination*).

[9] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79562 (December 22, 2015) (*India CVD Preliminary Determination*).

[10] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty*

Continued

Therefore, with regard to Korea, we will direct CBP to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of cold-rolled steel entered, or withdrawn from warehouse, for consumption on or after July 29, 2016, the date on which the Department published the *Korea CVD Final Determination* in the **Federal Register**.

Suspension of Liquidation

In accordance with section 706 of the Act, we will direct CBP to reinstitute the suspension of liquidation of cold-rolled steel from Brazil and India effective on the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to continue the suspension of liquidation of cold-rolled steel from Korea, effective on the date of publication of the Department's notice of final determination in the **Federal Register**. We will also direct CBP to assess, upon further instruction by the Department, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise.

On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Exporter/Producer from Brazil	Subsidy rate (percent)
Companhia Siderurgica Nacional (CSN)	11.31
Usinas Siderurgicas de Minas Gerais S.A. (Usiminas)	11.09
All Others	11.20

Exporter/Producer from India	Subsidy rate (percent)
JSW Steel Limited and JSW Steel Coated Products Limited	10.00
All Others	10.00

Exporter/Producer from Korea	Subsidy rate (percent)
POSCO	59.72
Hyundai Steel Co., Ltd.	3.89
All Others	3.89

Termination of the Suspension of Liquidation

The Department will instruct CBP to terminate the suspension of liquidation for entries of cold-rolled steel from India, entered or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination. The Department will also instruct CBP to refund any cash deposits made with respect to entries of cold-rolled steel entered, or withdrawn from warehouse, for consumption on or after December 22, 2015 (*i.e.,* the date of publication of the *India CVD Preliminary Determination*), but before April 20, 2016, (*i.e.,* the date suspension of liquidation was discontinued in accordance with section 703(d) of the Act).

Notifications to Interested Parties

This notice constitutes the CVD orders with respect to cold-rolled steel from Brazil, India, and Korea, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B8024 of the main Commerce building, for copies of an updated listed of CVD orders currently in effect.

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: September 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by these orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically

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Determination, 80 FR 79567 (December 22, 2015) (*Korea CVD Preliminary Determination*).

excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

- Ball bearing steels;[11]
- Tool steels;[12]
- Silico-manganese steel;[13]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.[14]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[15]

The products subject to these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the orders may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

[FR Doc. 2016–22614 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE892

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, October 11, 2016 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Hotel, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will review and discuss the draft scoping document for the upcoming limited access amendment to the Northeast Skate Complex Fishery Management Plan. They will also develop recommendations to the Skate Committee for 2017 Council priorities as well as discuss other business, as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 15, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22630 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE893

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, October 12, 2016 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thurber

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[11] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[12] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[13] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[14] *See Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[15] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Monkfish Advisory Panel will receive an overview from the Monkfish Plan Development Team on draft alternatives for Framework 10 regarding specifications for FY 2017–19 and days-at-sea allocation and/or possession limit alternatives. They will also develop recommendations to the Monkfish Committee regarding Framework 10 alternatives as well as discuss other business, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 15, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22626 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE877

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letters of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Sonoma County Water Agency (SCWA) for authorization to take marine mammals incidental to conducting estuary management activities in the Russian River, CA, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of SCWA's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on SCWA's application and request.

DATES: Comments and information must be received no later than October 20, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of SCWA's application and separate monitoring plan may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On September 2, 2016, NMFS received an adequate and complete application from SCWA requesting authorization for take of marine mammals incidental to Russian River estuary management activities in Sonoma County, California. The requested regulations would be valid for five years, from April 21, 2017, through April 20, 2022. The proposed action requires the use of heavy equipment (*e.g.,* bulldozer, excavator) and increased human presence, as well as the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA.

Therefore, SCWA requests authorization to incidentally take marine mammals.

NMFS has previously issued seven consecutive one-year incidental harassment authorizations (IHA) to SCWA, for take of marine mammals incidental to similar specified activities. SCWA was first issued an IHA, effective on April 1, 2010 (75 FR 17382), and was subsequently issued one-year IHAs for incidental take associated with the same activities, effective on April 21, 2011 (76 FR 23306), April 21, 2012 (77 FR 24471), April 21, 2013 (78 FR 23746), April 21, 2014 (79 FR 20180), April 21, 2015 (80 FR 24237), and April 21, 2016 (81 FR 22050). Monitoring reports submitted to NMFS as a condition of previously-issued IHAs are available online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Specified Activities

SCWA plans to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (the "lagoon management period"). Artificial breaching and monitoring activities may occur at any time during the period of validity of the proposed regulations.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning SCWA's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by SCWA, if appropriate.

Dated: September 13, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–22583 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board (NSGAB)

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (DOC).

ACTION: Notice of solicitation for nominations for the National Sea Grant Advisory Board and notice of public meeting.

SUMMARY: This notice responds to Section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94–461, 33 U.S.C. 1128), which requires the Secretary of Commerce (Secretary) to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board (Board), a Federal Advisory Committee that provides advice on the implementation of the National Sea Grant College Program (NSGCP). To apply for membership to the Board, applicants should submit a current resume to Mrs. Jennifer Hinden using the methods under the **FOR FURTHER INFORMATION CONTACT** section. A cover letter highlighting specific areas of expertise relevant to the purpose of the Board is helpful, but not required. National Oceanic and Atmospheric Administration (NOAA) is an equal opportunity employer.

This notice also sets forth the schedule and proposed agenda of a forthcoming meeting of the Board. Board members will discuss and provide advice on the NSGCP in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the National Sea Grant College Program Web site at *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx.*

DATES: Solicitation of nominations is open ended. Resumes may be sent to Mrs. Jennifer Hinden using the methods under the **FOR FURTHER INFORMATION CONTACT** section, at any time.

The announced meeting is scheduled for Sunday, October 9, 2016 from 9:00 a.m. to 1:30 p.m. EDT, and Monday, October 10, 2016 from 8:00 a.m. to 11:00 a.m. EDT.

Individuals Selected for Federal Advisory Committee Membership: Upon selection and agreement to serve on the Board, you become a Special Government Employee (SGE) of the United States Government. According to 18 U.S.C. 202(a), an SGE is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a fulltime or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Board must complete the following actions before they can be appointed as a Board member: (a) Security clearance (on-line background security check process and fingerprinting), and other applicable forms, both conducted through NOAA Workforce Management; and (b) Confidential Financial Disclosure Report—As an SGE, you are required to file a Confidential Financial Disclosure Report annually to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Report at the following Web site: *https://www.oge.gov/Web/oge.nsf/0/98A9E45F947BE66B85257EC10064B655/$FILE/oge450%20(June%202015)%20(fillable).pdf.*

FOR FURTHER INFORMATION CONTACT: Nominations will be accepted by email or mail. They should be sent to the attention of Mrs. Jennifer Hinden, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC 3, Room 11717, Silver Spring, Maryland 20910, or *Jennifer.Hinden@noaa.gov.* If you need additional assistance, call 301–734–1083.

For any additional questions concerning the meeting, please contact Mrs. Hinden using the contact information above.

ADDRESSES: The meeting will be held at the Newport Marriott Hotel located at 25 America's Cup Avenue, Newport, RI 02840.

Status: The meeting will be open to public participation with a 15-minute public comment period on Sunday, October 9, 2016 at 11:45 a.m. Check the agenda on the Web site to confirm time.

The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Mrs. Jennifer Hinden using the methods under the **FOR FURTHER INFORMATION CONTACT** section by Friday, September 30, 2016 to provide sufficient time for the Board review. Comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-serve basis.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mrs. Jennifer Hinden using the methods under the **FOR FURTHER INFORMATION CONTACT** section by Monday, September 26, 2016.

SUPPLEMENTARY INFORMATION: Established by Section 209 of the Act and as amended the National Sea Grant College Program Amendments Act of 2008 (Pub. L. 110–394), the duties of the Board are as follows:

(1) In general. The Board shall advise the Secretary and the National Sea Grant College Program Director (Director) concerning:

(A) Strategies for utilizing the Sea Grant College Program to address the Nation's highest priorities regarding the understanding, assessment, development, management, utilization, and conservation of ocean, coastal, and Great Lakes resources;

(B) The designation of Sea Grant Colleges and Sea Grant Institutes; and

(C) Such other matters as the Secretary refer to the Board for review and advice.

(2) Biennial Report. The Board shall report to the Congress every two years on the state of the National Sea Grant College Program. The Board shall indicate in each such report the progress made toward meeting the priorities identified in the strategic plan in effect under section 204(c). The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require carrying out its duties under this title.

The Board shall consist of 15 voting members who will be appointed by the Secretary for a 4-year term. The Director and a director of a Sea Grant program who is elected by the various directors of Sea Grant programs shall serve as nonvoting members of the Board. Not less than 8 of the voting members of the Board shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, marine affairs and resource management, coastal management, extension services, State government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, management, utilization, or conservation of ocean, coastal, and Great Lakes resources. No individual is eligible to be a voting member of the Board if the individual is (A) the director of a Sea Grant College or Sea Grant Institute; (B) an applicant for, or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 [33 U.S.C. 1124]; or (C) a full-time officer or employee of the United States.

Dated: September 14, 2016.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–22620 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE883

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the NMFS Northeast Fisheries Science Center (NEFSC) for the take of marine mammals incidental to fisheries research conducted in the Atlantic coast region.

DATES: Effective through September 9, 2021.

ADDRESSES: The LOA and supporting documentation is available online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 17, 2014, we received an adequate and complete request from NEFSC for authorization to take marine mammals incidental to fisheries research activities. On July 9, 2015 (80 FR 39542), we published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the NEFSC request for thirty days. We subsequently published corrections to the notice of proposed rulemaking in the **Federal Register** on August 6, 2015 (80 FR 46939), and August 17, 2015 (80 FR 49196), including an extension of the comment period. The final rule was published in the **Federal Register** on August 11, 2016 (81 FR 53061). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during fisheries research activities in the specified geographic region.

NEFSC conducts fisheries research using pelagic trawl gear used at various levels in the water column, bottom-contact trawl gear, pelagic and demersal longlines with multiple hooks, gillnets, fyke nets, dredges, pots, traps, and other gear. If a marine mammal interacts with gear deployed by NEFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.,* any injury that will likely result in mortality), or mortality. We pooled the estimated number of incidents of take resulting from gear interactions and assessed the potential impacts accordingly. NEFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on land may also occur as a result of visual disturbance from vessels conducting NEFSC research.

The NEFSC conducts fisheries research surveys in the Atlantic coast region which spans the United States-Canadian border to Florida. This specified geographic region includes the following subareas: the Gulf of Maine, Georges Bank, Southern New England waters, the Mid-Atlantic Bight, and the coastal waters of northeast Florida. The NEFSC is authorized to take individuals of 10 species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI + Level A) and of 19 species by Level B harassment.

Authorization

We have issued an LOA to NEFSC authorizing the take of marine mammals incidental to fisheries research activities, as described above. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of pelagic trawl nets, bottom-contact trawl gear, pelagic or demersal longline gear, gillnets, fyke nets, pots, traps, and other gears; (2) Required implementation of standard tow durations of not more than 30 minutes to reduce the likelihood of incidental take of marine mammals; (3) Required implementation of the mitigation strategy known as the "move-on rule," which incorporates best professional judgment, when necessary during trawl and longline operations; (4) Required compliance with applicable vessel speed restrictions; and (5) Required compliance with applicable and relevant take reduction plans for marine mammals. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The NEFSC will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: September 13, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–22582 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB); Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR) National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Thursday November 17, 2016 from 9:45 a.m. EST to 5:45 p.m. EST and on Friday November 18, 2016 from 8:30 a.m. EST to 1:45 p.m. EST. These times and the agenda topics described below are subject to change. Please refer to the Web page *www.sab.noaa.gov/SABMeetings.aspx* for the most up-to-date meeting times and agenda.

Place: The meeting will be held at The Nature Conservancy, 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203.

Status: The meeting will be open to public participation with a 15-minute public comment period on November 17 from 5:30–5:45 p.m. EST (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two (2) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Executive Director by November 10, 2016 to schedule their presentation. Written comments should be received in the SAB Executive Director's Office by November 10, 2016, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after November 10, 2016, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12:00 p.m. on November 10, 2016, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Highway, Silver Spring, MD 20910; Email: *Cynthia.Decker@noaa.gov.*

Matters To Be Considered: The meeting will include the following topics: (1) Report from the Review of the Cooperative Institute for Research in Environmental Sciences (CIRES); (2) Updates from the NOAA Administrator and Chief Scientist; (3) Discussion on the Ecosystem Services Valuation Report; (4) Discussion on the GOES–R Level 0 Data report; (5) Discussion on RESTORE Act Metrics and Communication report; (6) SAB Strategy Discussion and Implications for NOAA; and (7) Discussion of the SAB Working Group Concept of Operations.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Room 11230, 1315 East-West Highway, Silver Spring, MD 20910. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: September 14, 2016.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–22616 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

[Docket Number: 160830796–6796–01]

RIN 0660–XC030

Notice of Availability of a Draft Programmatic Environmental Impact Statement for the West Region of the Nationwide Public Safety Broadband Network and Notice of Public Meetings

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Announcement of availability of a draft programmatic environmental impact statement and of public meetings.

SUMMARY: The First Responder Network Authority ("FirstNet") announces the availability of the Draft Programmatic Environmental Impact Statement for the West Region ("Draft PEIS"). FirstNet also announces a series of public meetings to be held throughout the West Region to receive comments on the Draft PEIS. The Draft PEIS evaluates the potential environmental impacts of the proposed nationwide public safety broadband network in the West Region, composed of Arizona, California, Idaho, Nevada, Oregon, and Washington.

DATES: Submit comments on the Draft PEIS for the West Region on or before November 15, 2016. FirstNet will also hold public meetings in each of the six states. See **SUPPLMENTARY INFORMATION** section for meeting dates.

ADDRESSES: At any time during the public comment period, members of the public, public agencies, and other interested parties are encouraged to submit written comments, questions, and concerns about the project for FirstNet's consideration or to attend any of the public meetings. Written comments may be submitted electronically via *www.regulations.gov*, FIRSTNET–2016–0004, or by mail to Genevieve Walker, Director of Environmental Compliance, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192. Comments received will be made a part of the public record and may be posted to FirstNet's Web site (*www.firstnet.gov*) without change. Comments should be machine readable and should not be copy-protected. All personally identifiable information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The Draft PEIS is available for download from *www.regulations.gov*, FIRSTNET–2016–0004. A CD containing the electronic files of this document is also available at public libraries (see Chapter 14 of the Draft PEIS for the complete distribution list). See **SUPPLMENTARY INFORMATION** section for public meeting addresses.

FOR FURTHER INFORMATION CONTACT: For more information on the Draft PEIS, contact Genevieve Walker, Director of Environmental Compliance, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

Public Meetings

Attendees can obtain information regarding the project and/or submit a comment in person during public meetings. The meeting details are as follows:

- Olympia, Washington: October 3, 2016, from 4:00 p.m. to 8:00 p.m., DoubleTree by Hilton Hotel Olympia, 415 Capitol Way North, Olympia, WA 98501.
- Los Angeles, California: October 4, 2016, from 4:00 p.m. to 8:00 p.m., Omni Los Angeles Hotel at California Plaza, 251 South Olive Street, Los Angeles, CA 90012.
- Sacramento, California: October 5, 2016, from 4:00 p.m. to 8:00 p.m., Hyatt Regency Sacramento, 1209 L Street, Sacramento, CA 95814.
- Carson City, Nevada: October 6, 2016, from 4:00 p.m. to 8:00 p.m., Courtyard Carson City, 3870 South Carson Street, Carson City, NV 89701.
- Salem, Oregon: October 12, 2016, from 3:00 p.m. to 8:00 p.m., DoubleTree by Hilton Hotel Salem, Oregon, 1590 Weston Court NE., Salem, OR 97301.
- Phoenix, Arizona: October 18, 2016, from 4:00 p.m. to 8:00 p.m., Renaissance Phoenix Downtown Hotel, 100 North 1st Street, Phoenix, AZ 85004.
- Pocatello, Idaho: October 20, 2016, from 4:00 p.m. to 8:00 p.m., Red Lion Hotel Pocatello, 1555 Pocatello Creek Road, Pocatello, ID 83201.

Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 156 (codified at 47 U.S.C. 1401 *et seq.*)) (the "Act") created and authorized FirstNet to take all actions necessary to ensure the building, deployment, and operation of an interoperable, nationwide public safety broadband network ("NPSBN") based on a single, national network architecture. The Act meets a longstanding and critical national infrastructure need, to create a single, nationwide network that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety entities to effectively communicate with each other across agencies and jurisdictions. The NPSBN is intended to enhance the ability of the public safety community to perform more reliably, effectively, and safely; increase situational awareness during an emergency; and improve the ability of the public safety community to effectively engage in those critical activities.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) ("NEPA") requires federal agencies to undertake an assessment of environmental effects of their proposed actions prior to making a final decision and implementing the action. NEPA requirements apply to any federal project, decision, or action that may have a significant impact on the quality of the human environment. NEPA also establishes the Council on Environmental Quality ("CEQ"), which issued regulations implementing the procedural provisions of NEPA (see 40 CFR parts 1500–1508). Among other considerations, CEQ regulations at 40 CFR 1508.28 recommend the use of *tiering* from a "broader environmental impact statement (such as a national program or policy statements) with subsequent narrower statements or environmental analysis (such as regional or basin wide statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared."

Due to the geographic scope of FirstNet (all 50 states, the District of Columbia, and five territories) and the diversity of ecosystems potentially traversed by the project, FirstNet has elected to prepare five regional PEISs. The five PEISs were divided into the East, Central, West, South, and Non-

Contiguous Regions. The West Region consists of Arizona, California, Idaho, Nevada, Oregon, and Washington. The Draft PEIS analyzes potential impacts of the deployment and operation of the NPSBN on the natural and human environment in the West Region, in accordance with FirstNet's responsibilities under NEPA.

Next Steps

All comments received by the public and any interested stakeholders will be evaluated and considered by FirstNet during the preparation of the Final PEIS. Once a PEIS is completed and a Record of Decision (ROD) is signed, FirstNet will evaluate site-specific documentation, as network design is developed, to determine if the proposed project has been adequately evaluated in the PEIS or warrants a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement.

Dated: September 15, 2016.

Elijah Veenendaal,

Attorney—Advisor, First Responder Network Authority.

[FR Doc. 2016–22575 Filed 9–19–16; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Deputy Chief Management Officer, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal advisory committee meeting of the Defense Innovation Board ("the Board"). This meeting is partially closed to the public.

DATES: The public meeting of the Board will be held on Wednesday, October 5, 2016. The open portion of the meeting will begin at 9:30 a.m. and end at 11:30 a.m. (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, "Public's Accessibility to the Meeting.")

The closed portion of the meeting of the Board will be held from 12:30 p.m. to 4:30 p.m.

ADDRESSES: The open portion of the meeting will be held in the Pentagon Conference Center Room B6 in the Pentagon, Washington, DC (Escort required; See guidance in the **SUPPLEMENTARY INFORMATION** section, "Public's Accessibility to the Meeting.")

The closed portion of the meeting will be held at various locations in the Pentagon.

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer (DFO) is Roma Laster, Defense Innovation Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *roma.k.laster.civ@mail.mil.* The Board's Executive Director is Joshua Marcuse, Defense Innovation Board, 1155 Defense Pentagon, Room 3A1078, Washington, DC 20301–1155, *joshua.j.marcuse.civ@mail.mil.* For meeting information and to submit written comments or questions to the Board, send via email to mailbox address: *joshua.j.marcuse.civ@mail.mil.* Please include in the Subject line "DIB October 2016 Meeting."

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140.

Purpose of the Meeting: The mission of the Board is to examine and provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on innovative means to address future challenges in terms of integrated change to organizational structure and processes, business and functional concepts, and technology applications. The Board focuses on (a) technology and capabilities, (b) practices and operations, and (c) people and culture.

Meeting Agenda: During the open portion of the meeting on Wednesday, October 5, 2016, the Board will present and discuss their observations and recommendations on how to expand and advance innovation across the Department of Defense. Time permitting, the Board will discuss and deliberate on interim findings and recommendations regarding the challenges of: (a) Promoting innovative practices and culture in the conventional forces; (b) barriers to innovation and collaboration in the civilian workforce; (c) barriers to information sharing and the processing, exploitation, dissemination, and interoperability of data; (d) enabling workforce-driven innovation using crowdsourcing methodologies and techniques; (e) the lack of adequate organic capability and capacity for software development and rapid prototyping of software solutions; (f) approaches to increasing collaboration with entities outside the federal government; (g) recommendations on how to improve the digital infrastructure that supports command and control; (h) streamlining of rapid fielding processes, particularly for unmanned systems; (i) the lack of a dedicated computer science core in the workforce; and (j) potential application of emerging technologies such as artificial intelligence, autonomy, and man-machine teaming.

During the closed portion of the meeting on Wednesday, October 5, 2016, the Board will hold discussions of innovation with senior leaders from the Office of the Secretary of Defense, the Office of Net Assessment, and the Office of the Secretary of the Army. Discussion topics will include, but are not limited to, strategic platforms and technological advancements, briefings on emerging threats, future military capabilities, and observations from research sessions involving classified material. All presentations and resulting discussions are classified.

Public's Accessibility to the Meeting: Pursuant to Federal statutes and regulations (5 U.S.C., Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 9:30 a.m. to 11:30 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact the Executive Director to register and make arrangements for a Pentagon escort, if necessary, no later than five business days prior to the meeting, at the email address noted in the **FOR FURTHER INFORMATION CONTACT** section.

Public attendees requiring escort should arrive at the Pentagon Visitor's Center, located near the Pentagon Metro Station's south exit (the escalators to the left upon exiting through the turnstiles) and adjacent to the Pentagon Transit Center bus terminal, with sufficient time to complete security screening no later than 8:30 a.m. on October 5, 2016. Note: Pentagon tour groups enter through the Visitor's Center, so long lines could form well in advance. To complete security screening, please come prepared to present two forms of identification of which one must be a picture identification card. While some Government and military DoD Common Access Card holders are not required to have an escort, they may be required to pass through the Visitor's Center to gain access to the Pentagon.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Executive Director at least five business days prior to the meeting so that appropriate arrangements can be made.

Pursuant to 5 U.S.C. 552b(c)(1), the DoD has determined that the portion of the meeting from 12:30 p.m. to 4:30 p.m. shall be closed to the public. The Assistant Deputy Chief Management Officer, in consultation with the Office of the DoD General Counsel, has determined in writing that this portion of the committee's meeting will be closed as the discussions will involve classified matters of national security. Such classified material is so inextricably intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without disclosing matters that are classified SECRET or higher.

Procedures for Providing Public Comments: Pursuant to section 10(a)(3) of the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the Executive Director at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five business days prior to the meeting, otherwise, the comments may not be provided to or considered by the Board until a later date. The Executive Director will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: September 15, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22585 Filed 9–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on September 27–29, 2016, at the Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on September 27, 2016, in connection with a meeting of the SEQ on that day and on September 28, 2016. There will also be a meeting involving members of the IAB in connection with the IEA's 8th Emergency Response Exercise (ERE8) for SEQ delegates only to be held at the same location on September 29, 2016.

DATES: September 27–29, 2016.

ADDRESSES: 27, Rue de la Convention, 75015 Paris, France.

FOR FURTHER INFORMATION CONTACT: Thomas Reilly, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–5000.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France, commencing at 9:30 a.m. on September 28, 2016. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the same location and time. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on September 28. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting.

The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

Draft Agenda of the 149th Meeting of the SEQ to be held at the Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France, 13 September 2016, beginning at 9:30 a.m.:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 148th Meeting
3. Status of Compliance with IEP Agreement Stockholding Obligations
4. Australia Return to Compliance Update
5. Bilateral Stockholding in non-OECD Countries Report
6. "Oil Umbrella" Concept Next Steps
7. Oral Reports by Administration
8. Gas Resiliency Assessment of Japan
9. Emergency Response Review of Switzerland
10. ERR Programme & Preparations for New 2018–23 ERR Cycle
11. Changes to the IDR process
12. Industry Advisory Board Update
13. Mid-Term Review of Belgium
14. Report on ERE8 Main Exercise
15. Review of EU Oil Stocks Directive
16. Mexican Accession & Outreach Activities
17. Legal Study Update
18. Other Business

Schedule of SEQ and SOM Meetings, 2017 Provisional Dates:
—21–23 March 2017
—13–15 June 2017
—12–14 September 2017

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France, commencing at 14:00 on September 27, 2016. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM), which is scheduled to be held at the same location and time.

The agenda of the meeting is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

Draft Agenda of the Joint Session of the SEQ and the SOM to be held at the Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France, 27 September 2016, beginning at 14:00:

Introduction

19. Adoption of the Agenda
20. Approval of Summary Record of 31 May 2016
21. Reports on Recent Oil Market and Policy Developments in IEA Countries
22. Report by EIO on the "World Energy Investment—2016" followed by Q & A
23. The Current Oil Market Situation "Presentation of OMR SEP 2016" followed by Q & A
24. Presentation on "Panama Canal Expansion", followed by Q & A
25. Presentation on the "WEO Energy and Air Pollution special report" followed by Q & A.
26. Other Business

—Tentative schedule of upcoming SEQ and SOM meetings on:
—21–23 March 2017, location TBC

A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with the IEA's 8th Emergency Response Exercise (ERE8) for SEQ Delegates Only (EXSEQ) will be held at the Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France, on September 29, 2016. ERE8 will be held from 9:30 a.m.–3:30 p.m. on September 29, 2016. The purpose of ERE8 is to train IEA Government delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil and gas supply disruption scenario.

ERE8 will involve break-out groups, the constitution of which is under the control of the IEA. The IEA anticipates that individual break-out groups will not include multiple IAB or Reporting Company representatives that would qualify them as separate "meetings" within the meaning of the Voluntary Agreement, and accordingly attendance by additional full-time federal employees to monitor individual break-out groups is not expected to be required.

The agenda for ERE8 is under the control of the IEA. It is expected that the IEA will adopt the following agenda:

Draft Agenda of the 2016 Eighth Emergency Response Exercise (ERE8) for SEQ Delegates Only (EXSEQ), 29 September 2016, Conference Centre of the French Ministry of Foreign Affairs, 27, Rue de la Convention, 75015 Paris, France:

Introduction to Supply Disruption Scenario 1
  —Introduction & presentation of oil and gas scenario
Discussion/Analysis of Expected Market Reactions
Discussion/Analysis of Expected Market Reactions
Breakout Discussion
Plenary Discussion
Closing Remarks
End of Exercise

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA. Meetings for ERE8 are open only to SEQ delegates, as well as to representatives of the Directorate-General for Competition of the European Commission and representatives of members of the IEA Group of Reporting Companies may attend the meeting as observers. The meeting will also be open to representatives of the Secretary of Energy, the Secretary of State, the Attorney General, and the Federal Trade Commission severally, to any United States Government employee designated by the Secretary of Energy, and to the representatives of Committees of the Congress.

Issued in Washington, DC, September 15, 2016.

Thomas Reilly,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2016–22610 Filed 9–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–427]

Application To Rescind and Issue and Authorization To Export Electric Energy; Emera Maine

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Emera Maine (Applicant or Emera Maine) has applied for authority to rescind Export Authorization Order E–6751 and for the coincident issuance of an authorization to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before October 20, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 31, 2016, DOE received an application from Emera Maine to rescind DOE Order E–6751 issued to Maine Public Service Company on December 5, 1963 for authority to transmit electric energy from the United States to Canada and to issue a new Export Authorization to Emera Maine. Emera Maine is a new company formed when Maine Public Service Company and Bangor Hydro Electric Company merged. Emera Maine is requesting to export electric energy over facilities currently covered by Presidential permit that they own as well as any facilities at the U.S.-Canada border appropriate for third party access. In its application, Emera Maine states that it will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to export electric energy. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Emera Maine's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–427. An additional copy is to be provided to Tim Pease, Director, Legal & Regulatory Affairs AND Chad Wilcox, Manager, Rates, Emera Maine, P.O. Box 932, Bangor, ME 04401 AND Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on September 14, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–22621 Filed 9–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–243–C]

Application To Export Electric Energy; Tenaska Power Services Co.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Tenaska Power Services Co. (Applicant or TPS) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before October 20, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On January 19, 2012, DOE issued Order No. EA–243–B to TPS, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on March 1, 2017. On September 1, 2016, TPS filed an application with DOE for renewal of the export authority contained in Order No. EA–243 for an additional five-year term.

In its application, TPS states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that TPS proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by TPS have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning TPS's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–243–C. An additional copy is to be provided directly to both Norma Rosner Iacovo, Tenaska Power Services Co., 1701 E. Lamar Blvd., Suite 100, Arlington, TX 76006 and Neil L. Levy, King & Spalding LLP, 1700 Pennsylvania Ave. NW., Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on September 14, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–22622 Filed 9–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 22, 2016, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1030TH—MEETING

[Regular Meeting; September 22, 2016; 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD16–1–000	Agency Administrative Matters.
A–2	AD16–7–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E–1	RM01–8–000	Filing Requirements for Electric Utility Service Agreements.
	RM10–12–000	Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.
	RM12–3–000	Revisions to Electric Quarterly Report Filing Process.
	ER02–2001–000	Electric Quarterly Reports.
E–2	RM16–21–000	Modifications to Commission Requirements for Review of Transactions under Section 203 of the Federal Power Act and Market-Based Rate Applications under Section 205 of the Federal Power Act.
E–3	EL14–34–003	Public Service Commission of Wisconsin v. Midcontinent Independent System Operator, Inc.
	ER14–1242–005, ER14–1243–007, ER14–1724–003, ER14–1725–003, ER14–2176–003, ER14–2180–003, ER14–2860–002, ER14–2862–002, ER14–2952–002, ER14–2952–005.	Midcontinent Independent System Operator, Inc.
	EL15–7–001	Michigan Public Service Commission v. Midcontinent Independent System Operator, Inc.
E–4	RM15–11–000	Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events.
E–5	RM16–13–000	Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Reliability Standards.
E–6	RD16–6–000	North American Electric Reliability Corporation.
E–7	ER12–1266–005, ER12–1266–006	Midcontinent Independent System Operator, Inc.
E–8	ER12–1265–005, ER12–1265–006	Midcontinent Independent System Operator, Inc.
E–9	ER16–197–002	Midcontinent Independent System Operator, Inc.
E–10	ER11–1844–001, ER11–1844–002	Midwest Independent Transmission System Operator, Inc.
E–11	ER14–1831–003	PJM Interconnection, L.L.C., Virginia Electric and Power Company.
E–12	ER10–1350–006	Entergy Services, Inc.
E–13	ER10–1350–005	Entergy Services, Inc.
E–14	ER16–1169–000	Ameren Illinois Company.
E–15	EC16–135–000	AEP Texas Central Company, AEP Texas North Company, AEP Utilities, Inc.
E–16	AC15–174–001	Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, Duke Energy Florida, LLC.
E–17	EL13–41–001	Occidental Chemical Corporation v. Midwest Independent Transmission System Operator, Inc.
	GAS	
G–1	OMITTED	
G–2	RP16–299–000, RP16–1137–000 (not consolidated).	Tuscarora Gas Transmission Company.
G–3	RP16–302–000	Columbia Gulf Transmission, LLC.
G–4	PR15–5–002, RP15–238–000	Washington Gas Light Company.
G–5	RP16–1082–000	Columbia Gas Transmission, LLC.
	HYDRO	
H–1	EL16–50–000	Percheron Power, LLC.
H–2	P–12715–008	Fairlawn Hydroelectric Company, LLC.
H–3	P–2212–049	Domtar Paper Company, LLC.
	CERTIFICATES	
C–1	CP16–64–000	ANR Pipeline Company.
C–2	CP16–78–000	Kinetica Deepwater Express, LLC.

Dated: September 15, 2016.

Kimberly D. Bose,
Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016–22686 Filed 9–16–16; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14798–000]

Western Minnesota Municipal Power Agency; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 15, 2016, Western Minnesota Municipal Power Agency filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Coon Rapids Hydroelectric Project (Coon Rapids Project or project) located on the Mississippi River at River Mile 866.2, about 11.5 miles north of downtown Minneapolis, Minnesota. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following facilities: (1) An existing reservoir with a surface area of 600 square miles at normal pool elevation of 830.1 National Geodetic Vertical Datum with no storage capacity; (2) the existing 1,455-foot-long, 30.8-foot-high Coon Rapids Dam with nine intermediate piers and ten spans with crest gates; (3) an array of micro-turbines placed in front of two cast in place powerhouses; (4) a 97-foot-long, 18-foot-wide, 19-foot-high reinforced concrete powerhouse located immediately downstream of the span 9 spillway section and a 103-foot-long, 18-foot-wide, 19-foot-high reinforced concrete powerhouse located immediately downstream of the span 10 spillway section with each powerhouse divided in half resulting in four bays in which the micro-turbines would be installed; (5) two crane rails spanning the length of each powerhouse to remove the micro-turbine units for maintenance and lower them in place for generation; (6) a tailrace made of steel draft tubes discharging directly into the Mississippi River; (7) a third powerhouse 60-foot-wide by 80-foot-long containing the controls for the dam's crest gates and necessary electrical and mechanical equipment to support the micro-turbines; (8) a 550-foot-long, 13.8 kilo-volt underground transmission line connecting to an Xcel Energy substation; and (9) appurtenant facilities. The estimated annual generation of the proposed Coon Rapids Project would be 62,790 megwatt-hours.

Applicant Contact: Raymond J. Wahle, P.E., Missouri River Energy Services, 3724 W. Avera Drive, P.O. Box 88920, Sioux Falls, SD 57109; phone: (605) 330–6963; fax: (605) 978–3960; email: *rwahle@mrenergy.com.*

FERC Contact: Sergiu Serban; phone: (202) 502–6211; email: *sergiu.serban@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14798–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/ecomment.asp.* Enter the docket number (P–14798) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22603 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–357–000; Docket No. CP16–361–000]

Columbia Gas Transmission, LLC, Columbia Gulf Transmission, LLC; Notice of Schedule for Environmental Review of the Mountaineer XPress Project and the Gulf XPress Project

On April 29, 2016, Columbia Gas Transmission, LLC (Columbia Gas) and Columbia Gulf Transmission, LLC (Columbia Gulf) filed applications in Docket Nos. CP16–357–000 and CP16–361–000, respectively, requesting Certificates of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to construct, operate, and maintain certain natural gas pipeline facilities. Columbia Gas' proposed Mountaineer XPress Project in West Virginia would transport up to 2,700,000 dekatherms per day (Dth/d) of natural gas from receipt points in West Virginia, Ohio, and Pennsylvania, to markets on the Columbia Pipeline Group system. Columbia Gulf's proposed Gulf XPress Project in Kentucky, Tennessee, and Mississippi would expand the capacity of Columbia Gulf's existing system to allow for an additional 860,000 Dth/d of natural gas delivery to high-demand markets in the Gulf Coast region. Because these are interrelated projects, the Federal Energy Regulatory Commission (FERC or Commission) deemed it was appropriate to analyze them in a single environmental impact statement (EIS).

FERC issued respective Notices of Application for the Mountaineer XPress and Gulf XPress Projects on May 13, 2016. Among other things, those notices alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the two projects. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the projects, which is based on an issuance of the draft EIS in November 2016.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—April 28, 2017

90-day Federal Authorization Decision Deadline—July 27, 2017

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the projects' progress.

Project Description

The Mountaineer XPress Project consists of new pipeline and compression facilities, all in the state of West Virginia. The major proposed facilities include 163.9 miles of new 36-inch-diameter pipeline in Marshall and Cabell Counties; 5.8 miles of new 24-inch-diameter pipeline in Doddridge County; 0.4 mile of replacement 30-inch-diameter pipeline on segments of Columbia Gas' SM80 and SM80 loop pipelines in Cabell County; three new compressor stations (totaling 106,300 horsepower) in Doddridge, Calhoun, and Jackson Counties; two new regulating stations in Ripley and Cabell Counties; and added compression at three existing compressor stations in Marshall, Wayne, and Kanawha Counties.

The Gulf XPress Project consists of construction and operation of seven new compressor stations, and upgrades at one existing meter station and one pending compressor station (under Docket No. CP15–539) on Columbia Gulf's existing system, spread across Kentucky (Carter, Boyd, Rowan, Garrard, and Metcalfe Counties), Tennessee (Davidson and Wayne Counties), and Mississippi (Union and Grenada Counties).

Background

On September 16, 2015, the Commission staff granted Columbia Gas' request to use the FERC's Pre-filing environmental review process and assigned the Mountaineer XPress Project temporary Docket No. PF15–31–000. On November 18, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Mountaineer XPress Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*. The Gulf XPress Project did not utilize the FERC's Pre-filing environmental process, and on June 2, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Gulf XPress Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting*.

The Notices of Intent were sent to our environmental mailing list that include federal, state, and local government agencies; elected officials; affected landowners; regional environmental groups and nongovernmental organizations; Native Americans and Indian tribes; local libraries and newspapers; and other interested parties. Major environmental issues raised during scoping included karst terrain; impacts on groundwater and surface waterbodies; impacts on forests; impacts on special status species; impacts on property values and the use of eminent domain; impacts on the local economy; impacts on historic properties and districts; visual impacts from compressor stations; impacts on land use; impacts on air quality and noise from construction and operation of pipeline facilities; and public health and safety.

The U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; West Virginia Department of Environmental Protection; and West Virginia Division of Natural Resources are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription (*http://www.ferc.gov/docs-filing/esubscription.asp*). Additional data about the projects can be obtained electronically through the Commission's Internet Web site (*www.ferc.gov*). Under "Dockets & Filings," use the "eLibrary" link, select "General Search" from the menu, enter the docket numbers excluding the last three digits (*i.e.,* CP16–357 or CP16–361), and the search dates. Questions about the projects can be directed to the Commission's Office of External Affairs at (866) 208–FERC.

Dated: September 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22604 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–21–000]

Mary Ann Gaston; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On September 1, 2016, as supplemented on September 13, 2016, Mary Ann Gaston filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Gaston Hydro Facility would have an installed capacity of 4 kilowatts (kW), and would be located near the end of an existing irrigation pipeline on the applicant's land. The project would be located near the Town of Norwood in San Miguel County, Colorado.

Applicant Contact: Mary Ann Gaston, 1280 CR44ZN, Norwood, CO 81423 Phone No. (970) 327–0333.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *Christopher.Chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A barrel housing containing one 4-jet Turgo turbine/generating unit with an installed capacity of 4 kW; (2) 4 short, 2-inch-diameter intake manifold pipes; (3) one 8-inch-diameter tailrace pipe discharging water to an existing irrigation pond; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 6,382 kilowatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY—Continued

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts.	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed addition of the hydroelectric project along the existing irrigation pipeline will not alter its primary purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number (*i.e.,* CD16–21) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: September 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22599 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] 18 CFR 385.2001–2005 (2016).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2376–049]

Appalachian Power Company, Eagle Creek Reusens Hydro, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On September 1, 2016, Appalachian Power Company (transferor) and Eagle Creek Reusens Hydro, LLC (transferee) filed an application for the transfer of license of the Reusens Project No. 2376. The project is located on the James River in Amherst and Bedford counties, Virginia.

The applicants seek Commission approval to transfer the license for the Reusens Project from Appalachian Power Company to Eagle Creek Reusens Hydro, LLC.

Applicants Contact: For transferor: Ms. Noelle J. Coates, American Electric Service Corporation, Three James Center, 1051 E. Cary Street, Suite 1100, Richmond, VA 23219, Phone: 804–698–5541, Email: *njcoates@aep.com;* Ms. Amanda R. Connor, American Electric Service Corporation, 801 Pennsylvania Ave NW., Suite 735, Washington, DC 20004–2615, Phone: 202–383–3436, Email: *arconner@aep.com;* and Mr. John A. Whittaker, IV and Ms. Kimberly Ognisty, Winston & Strawn LLP, 1700 K Street NW., Washington, DC 20006, Phones: 202–282–5766 and 202–282–5217, Emails: *jwhittaker@winston.com* and *koginsty@winston.com.* For transferee: Mr. Bernard Cherry, Eagle Creek Reusens Hydro, LLC, 65 Madison Avenue, Morristown, NJ 07960, Phone: 973–998–8400, Email: *Bud.cherry@eaglecreekre.com;* and Mr. Donald H. Clarke and Mr. Joshua E. Adrian, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street NW., Suite 800, Washington, DC 20036, Emails: *dhc@dwgp.com* and *jea@dwgp.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2376–049.

Dated: September 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22597 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL16–115–000]

Windham Solar, LLC, Allco Finance Limited; Notice of Petition for Enforcement

Windham Solar, LLC: QF16–362–002, QF16–363–002, QF16–364–002, QF16–365–002, QF16–366–002, QF16–367–002, QF16–368–002, QF16–369–002, QF16–370–002, QF16–371–002, QF16–372–002, QF16–373–002, QF16–374–002, QF16–375–002, QF16–376–002, QF16–377–002, QF16–378–002, QF16–379–002, QF16–380–002, QF16–381–002, QF16–382–002, QF16–383–002, QF16–384–002, QF16–385–002, QF16–386–002, QF16–387–002

Take notice that on September 12, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), Windham Solar LLC and Allco Finance Limited filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Connecticut Public Utilities Regulatory Authority to remedy its implementation of PURPA, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 3, 2016.

Dated: September 13, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22601 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP16–488–000]

Natural Gas Pipeline Company of America; Notice of Intent To Prepare an Environmental Assessment for the Proposed Gulf Coast Expansion Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Gulf Coast Expansion Project involving construction and operation of facilities by Natural Gas Pipeline Company of America, LLC (Natural) in Cass and Wharton Counties, Texas. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 14, 2016.

If you sent comments on this project to the Commission before the opening of this docket on August 1, 2016, you will need to file those comments in Docket No. CP16–488–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Natural provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to

Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–488–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Natural proposes to construct and operate a new compressor station, identified as Compressor Station 394 (CS 394), and a new approximately 4,000-foot-long, 30-inch-diameter lateral, with connections to Natural's existing Gulf Coast Line and A/G Line in Cass County, Texas. Natural is also requesting authorization to abandon two compressor units at its Compressor Station 301 (CS 301) located in Wharton County, Texas. The Project would provide about 460,000 dekatherms of incremental southbound transportation capacity from existing receipt points on Natural's Gulf Coast System to delivery points in Natural's South Texas Zone.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 39.9 acres of land for the aboveground facilities and the pipeline. Following construction, Natural would maintain about 27.3 acres for permanent operation of the project's facilities. The remaining 12.6 acres would only be used for construction and be allowed to revegetate.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary (for directions on the use of eLibrary, please see the additional page 6). Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable Texas State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

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[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene.

Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–488–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22600 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–16–000]

Implementation Issues Under the Public Utility Regulatory Policies Act of 1978; Notice Inviting Post-Technical Conference Comments

On June 29, 2016, Federal Energy Regulatory Commission (Commission) staff conducted a technical conference to discuss implementation issues related to the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] The Commission invites post-technical conference comments on the following two matters: (1) The use of the "one-mile rule" to determine the size of an entity seeking certification as a small power production qualifying facility (QF); and (2) minimum standards for PURPA-purchase contracts.

All interested persons are invited to file post-technical conference comments on these two matters, including the questions listed in the attachment to this Notice. Commenters need not respond to all questions asked. Commenters may reference material previously filed in this docket, including the technical conference transcript, but are encouraged to submit new or additional information rather than reiterate information that is already in the record. In particular, Commenters are encouraged, when possible, to provide examples in support of their answers. These comments are due on or before November 7, 2016.

For further information about this Notice, please contact:

Adam Alvarez (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6734, *adam.alvarez@ferc.gov.*

Loni Silva (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6233, *loni.silva@ferc.gov.*

Dated: September 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22598 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] 16 U.S.C. 2601 *et seq.* (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2387–003]

City of Holyoke Gas and Electric Department; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. Project No.: 2387–003.

c. Date filed: August 31, 2016.

d. *Applicant:* City of Holyoke Gas and Electric Department.

e. *Name of Project:* Holyoke Number 2 Hydroelectric Project.

f. *Location:* Between the first and second level canals on the Holyoke Canal System adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul Ducheney, Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com.*

i. *FERC Contact:* Kyle Olcott, (202) 502–8963 or *kyle.olcott@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 31, 2016.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2387–003.

m. The application is not ready for environmental analysis at this time.

n. The existing Holyoke Number 2 project consists of: (1) An intake at the wall of the First Level Canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004) with three trash rack screens (one 16-foot-2-inch tall by 26-foot-2-inch-wide and two 14-foot-9-inch tall by 21-foot-10-inch long) with 3-inch clear spacing; (2) two 9-foot-diameter, 240-foot-long penstocks; (3) a 17-foot-high by 10-foot-diameter surge tank; (4) a 60-foot-long by 40-foot-wide by 50-foot high powerhouse with one 800-kilowatt vertical turbine generator unit; (4) two parallel 9-foot-wide, 10-foot-high, 120-foot-long brick arched tailrace conduits discharging into the Second Level Canal; (5) an 800-foot-long, 4.8-kilovolt transmission line; and (6) appurtenant facilities. The project is estimated to generate 4,710,000 kilowatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter.	October 2016.
Request Additional Information.	October 2016.
Issue Acceptance Letter	January 2017.
Issue Scoping Document 1 for comments.	February 2017.
Request Additional Information (if necessary).	April 2017.
Issue Scoping Document 2 (if necessary).	May 2017.
Notice that application is ready for environmental analysis.	May 2017.
Notice of the availability of the draft EA.	November 2017.
Notice of the availability of the final EA.	February 2018.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22605 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2388–004]

City of Holyoke Gas and Electric Department; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2388–004.

c. *Date filed:* August 31, 2016.

d. *Applicant:* City of Holyoke Gas and Electric Department.

e. *Name of Project:* Holyoke Number 3 Hydroelectric Project.

f. *Location:* Between the second and third level canals on the Holyoke Canal System adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul Ducheney, Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com.*

i. *FERC Contact:* Kyle Olcott, (202) 502–8963 or *kyle.olcott@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 31, 2016.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2388–004.

m. The application is not ready for environmental analysis at this time.

n. *The existing Holyoke Number 3 project consists of:* (1) A 52-foot-3-inch long by 14-foot-high intake trashrack covering an opening in the Second Level Canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004); (2) two 11-foot-high by 11-foot-wide headgates; (3) two 85-foot-long, 93-square-foot in cross section low pressure brick penstocks; (4) a 42-foot-long by 34-foot-wide by 28-foot-high reinforced concrete powerhouse with one 450-kilowatt turbine generator unit;

(5) a 29.7-foot-wide, 10-foot-deep, 118-foot-long open tailrace discharging into the Third Level Canal; and, (6) 4.8-kilovolt generator leads that connect directly to the 4.8-kilovolt area distribution system; and (7) appurtenant facilities. The project is estimated to generate 2,119,000 kilowatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—October 2016

Request Additional Information—October 2016

Issue Acceptance Letter—January 2017

Issue Scoping Document 1 for comments—February 2017

Request Additional Information (if necessary)—April 2017

Issue Scoping Document 2 (if necessary)—May 2017

Notice that application is ready for environmental analysis—May 2017

Notice of the availability of the draft EA—November 2017

Notice of the availability of the final EA—February 2018

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22606 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2386–004]

City of Holyoke Gas and Electric Department; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2386–004.

c. *Date filed:* August 31, 2016.

d. *Applicant:* City of Holyoke Gas and Electric Department.

e. *Name of Project:* Holyoke Number 1 Hydroelectric Project.

f. *Location:* Between the first and second level canals on the Holyoke Canal System adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul Ducheney, Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com.*

i. *FERC Contact:* Kyle Olcott, (202) 502–8963 or *kyle.olcott@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: October 31, 2016.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2386–004.

m. The application is not ready for environmental analysis at this time.

n. *The existing Holyoke Number 1 project consists of:* (1) An intake at the wall of the First Level Canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004) with two 14-foot-8-inch-tall by 24-foot-7.5-inch wide trash rack screens with 3.5-inch clear spacing; (2) two parallel 10-foot-diameter, 36.5-foot-long penstocks; (3) a 50-foot-long by 38-foot-wide brick powerhouse with two 240-kilowatt and two 288-kilowatt turbine generator units; (4) two parallel 20-foot-wide, 328.5-foot-long brick arched tailrace conduits discharging into the Second Level Canal; and, (5) appurtenant facilities. There is no transmission line associated with the project as it is located adjacent to the substation of interconnection. The project is estimated to generate 2,710,000 kilowatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary Hydro Licensing Schedule.

Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—October 2016
Request Additional Information—October 2016
Issue Acceptance Letter—January 2017
Issue Scoping Document 1 for comments—February 2017
Request Additional Information (if necessary)—April 2017
Issue Scoping Document 2 (if necessary)—May 2017
Notice that application is ready for environmental analysis—May 2017
Notice of the availability of the draft EA—November 2017
Notice of the availability of the final EA—February 2018

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22602 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–056]

Sabine River Authority of Texas, Sabine River Authority, State of Louisiana; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Temporary Variance of License.

b. *Project No.:* 2305–056.

c. *Date Filed:* July 29, 2016.

d. *Applicants:* Sabine River Authority of Texas, Sabine River Authority, State of Louisiana.

e. *Name of Project:* Toledo Bend Hydroelectric Project.

f. *Location:* On the Sabine River on the Texas-Louisiana border in Panola, Shelby, Sabine, and Newton counties in Texas, and DeSoto, Sabine, and Vernon parishes in Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jim Brown, Compliance Officer, Toledo Bend Project Joint Operation, Sabine River Authority, Texas, P.O. Box 579, Orange, TX 77631–0579, (409) 746–2192, *jbrown@sratx.org.*

i. *FERC Contact:* Steve Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 14 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2305–056.

k. *Description of Request:* The applicants request a temporary variance of the continuous flow releases required by Article 402 of the license. Specifically, the applicants request that the Commission grant them a temporary variance to continue the 144 cubic feet per second release from the existing bypass conduits until the applicants complete the spillway refurbishment project. The ongoing refurbishment project necessitates vehicular access to the spillway apron and releasing the required continuous flows from the spillway gates, as proposed in their Spillway Flow Release Plan would prevent the vehicular access. The applicants expect to complete the work by October 31, 2016, but state that they would implement the targeted continuous flows immediately if they are able to complete construction sooner.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "MOTION TO INTERVENE", or "PROTEST" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the temporary variance request. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–22596 Filed 9–19–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–66–Region 8]

Settlement Agreement for Recovery of Past Response Costs: Empire State Oil Co.—Refinery Superfund Site, Thermopolis, Hot Springs County, Wyoming

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9604, 9606(a), 9607 and 9622, notice is hereby given of the proposed settlement under section 122 (h)(1) of CERCLA, between the U.S. Environmental Protection Agency ("EPA") and Sinclair Casper Refining Company ("Settling Party"). The proposed Settlement Agreement requires the Settling Party to reimburse the EPA for past response costs. The Settling Party will pay ($655,000.00) within 30 days after the effective date of the Proposed Agreement to the EPA. The Settling Party consents to and will not contest the authority of the United States to enter into the Agreement or to implement or enforce its terms. The Settling Party recognizes that the Agreement has been negotiated in good faith and that the Agreement is entered into without the admission or adjudication of any issue of fact or law.

DATES: Comments must be submitted on or before October 20, 2016. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

ADDRESSES: The proposed agreement and additional background information relating to the agreement, as well as the Agency's response to any comments are or will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado, by appointment. Comments and requests for a copy of the proposed agreement should be addressed to Shawn McCaffrey, Enforcement Specialist, Environmental Protection Agency-Region 8, Mail Code 8ENF–RC, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Empire State Oil Co—Refinery Superfund Site, EPA Docket No. CERCLA–08–2016–0006.

FOR FURTHER INFORMATION CONTACT: Douglas Naftz, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency-Region 8, Mail Code 8ENF–L, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6942.

Dated: August 26, 2016.

Suzanne Bohan,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 2016–22628 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–60–OA]

Meetings of the Local Government Advisory Committee and the Small Communities Advisory Subcommittee (SCAS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee (SCAS) will meet via teleconference on Friday, October 7, 2016 at 10:30 a.m.–11:30 a.m.. (ET). The Subcommittee will discuss recommendations for EPA's development of a national action plan on drinking water, with a focus on issues affecting agricultural, rural, and other small communities. This is an open meeting and all interested persons are invited to participate. The Subcommittee will hear comments from the public between 10:40 a.m.–10:55 a.m. on October 7, 2016. Individuals or organizations wishing to address the Subcommittee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for presentations requires it.

The Local Government Advisory Committee (LGAC) will meet via teleconference on Friday, October 7, 2016, 11:30 a.m.–12:30 p.m. (ET). The Committee will discuss recommendations of the subcommittee and LGAC workgroups, including recommendations on EPA's development of a national action plan on drinking water.

+ This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 11:45 a.m.–12:00 p.m. (ET) on Friday, October 7, 2016. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for presentations requires it.

ADDRESSES: EPA's Local Government Advisory Committee meetings will be held via teleconference. Meeting summaries will be available after the meeting online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Local Government Advisory Committee (LGAC) contact Frances Eargle at (202) 564–3115 or email at *eargle.frances@epa.gov.*

Information Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Jack Bowles,

Director, State and Local, EPA's Office of Congressional and Intergovernmental Relations.

[FR Doc. 2016–22633 Filed 9–19–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0394]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0394.

Title: Section 1.420, Additional Procedures in Proceedings for Amendment of FM, TV or Air-Ground Table of Allotments.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 30 respondents; 30 responses.

Estimated Time per Response: 0.33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 10 hours.

Total Annual Cost: $13,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 1.420(j) requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, the exact nature and amount of consideration received or promised, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five (5) days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses and provide the terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–22521 Filed 9–19–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1167]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1167.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 4,541 respondents; 54,064 responses.

Estimated Time per Response: .50 hours (30 minutes) to 35 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 155,419 hours.

Total Annual Cost: $17,510.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, "Informal Complaints, Inquiries and Requests for Dispute Assistance", which became effective on September 24, 2014. In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: On October 7, 2011, in document FCC 11–151, the FCC released a Report and Order adopting final rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). *See* Pub. L. 111–260, 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible, if readily achievable. 47 U.S.C. 255. Section 718 of the Act requires Web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. 619. On April 29, 2013, in document FCC 13–57, the FCC released a Second Report and Order adopting final rules to implement section 718 of the Act. On March 12, 2015, in document FCC 15–24, the FCC released a Report and Order on Remand, Declaratory Ruling, and Order reclassifying broadband Internet access service (BIAS) as a telecommunications service that is subject to the Commission's regulatory authority under Title II of the Act and applying section 255 of the Act and the Commission's implementing rules to providers of BIAS and manufacturers of equipment used for BIAS.

Among other things, the FCC established procedures in document FCC 11–151 to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

The filing of a request for dispute assistance is used to initiate a 30-day period which must precede the filing of an informal complaint. The burdens associated with filing requests for dispute assistance and informal complaints are contained in the collection found in OMB control number 3060–0874. Therefore, the Commission extracted those burdens from the collection found in OMB control number 3060–1167. In addition, the Commission has revised its estimate of the number of requests for dispute assistance and the number of informal complaints that it expects to receive and the burdens associated with the processing and handling of those requests and complaints.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–22523 Filed 9–19–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 20, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: National Deaf-Blind Equipment Distribution Program.

Form Number: N/A.

Type of Review: New collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions; state, local, or tribal governments.

Number of Respondents and Responses: 78 respondents; 3,631 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, semiannual, quarterly, monthly, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefit. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), and 719 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620.

Total Annual Burden: 7,995 hours.

Total Annual Cost: $600.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the Commission's system of records notice (SORN), FCC/CGB–3, "National Deaf-Blind Equipment Distribution Program," which became effective on February 28, 2012.

Privacy Impact Assessment: The Commission completed a Privacy Impact Assessment (PIA) on December 31, 2012. The PIA may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA with respect to the Commission's adoption of rules in document FCC 16–101 on August 4, 2016, which converted the pilot program to a permanent program without change to the PII covered by these information collections.

Needs and Uses: Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) added section 719 to the Communications Act of 1934, as amended (the Act). Pub. L. 111–260, 124 Stat. 2751 (2010); Pub. L. 111–265, 124 Stat. 2795 (2010) (making technical corrections); 47 U.S.C. 620. Section 719 of the Act requires the Commission to establish rules that define as eligible for up to $10,000,000 of support annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind. 47 U.S.C. 620(a), (c). Accordingly, on April 6, 2011, the Commission released a Report and Order, document FCC 11–56, adopting rules to establish the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program. *See* 47 CFR 64.610(a) through (k). The FCC's Consumer and Governmental Affairs Bureau (CGB or Bureau) launched the pilot program on July 1, 2012. In an Order released on May 27, 2016, document FCC 11–69, the Commission extended the pilot program to June 30, 2017, at which time distributing equipment and providing related services under the pilot program will cease.

On August 5, 2016, the Commission released a Report and Order, document FCC 16–101, adopting rules to establish the NDBEDP, also known as "iCanConnect," as a permanent program. *See* 47 CFR 64.6201 through 64.6219. In document FCC 16–101, the Commission clarified that the pilot program will not terminate until after all reports have been submitted, all payments and adjustments have been made, and all wind-down activities have been completed, and no issues with regard to the NDBEDP pilot program remain pending. Information collections related to NDBEDP pilot program activities are included in OMB Control Number 3060–1146, Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210, which will expire June 30, 2018.

Rules for the NDBEDP permanent program that are subject to the PRA will become effective on the date specified in a notice published in the **Federal Register** announcing OMB approval. At that time, in accordance with document 16–101, the Bureau will announce the timing of the 60-day period for new and incumbent entities to apply for certification to participate in the permanent NDBEDP. To minimize any disruption of service in the transition between the pilot program and the permanent program, the Bureau will announce its selection of the entities certified to participate in the NDBEDP permanent program as soon as possible, but certifications to participate in the NDBEDP permanent program will not become effective before July 1, 2017.

Because the information collection burdens related to NDBEDP pilot program activities overlap in time with the information collection burdens related to NDBEDP permanent program activities, the Commission is seeking approval for a new collection for the information burdens associated with the permanent NDBEDP.

In document FCC 16–101, the Commission adopted rules requiring the following:

(a) Entities must apply to the Commission for certification to receive reimbursement from the TRS Fund for NDBEDP activities.

(b) A program wishing to relinquish its certification before its certification expires must provide written notice of its intent to do so.

(c) Certified programs must disclose to the Commission actual or potential conflicts of interest.

(d) Certified programs must notify the Commission of any substantive change that bears directly on its ability to meet the qualifications necessary for certification.

(e) A certified entity may present written arguments and any relevant documentation as to why suspension or revocation of certification is not warranted.

(f) When a new entity is certified as a state's program, the previously certified entity must take certain actions to complete the transition to the new entity.

(g) Certified programs must require an applicant to provide verification that the applicant is deaf-blind.

(h) Certified programs must require an applicant to provide verification that the applicant meets the income eligibility requirement.

(i) Certified programs must re-verify the income and disability eligibility of an equipment recipient under certain circumstances.

(j) Certified programs must permit the transfer of an equipment recipient's account when the recipient relocates to another state.

(k) Certified programs must include an attestation on consumer application forms.

(l) Certified programs must conduct annual audits and submit to Commission-directed audits.

(m) Certified programs must document compliance with NDBEDP requirements, provide such documentation to the Commission upon request, and retain such records for at least five years.

(n) Certified programs must submit reimbursement claims as instructed by the TRS Fund Administrator, and supplemental information and documentation as requested. In addition, the entity selected to conduct national outreach will submit claims for reimbursement on a quarterly basis.

(o) Certified programs must submit reports every six months as instructed by the NDBEDP Administrator. In addition, the entity selected to conduct national outreach will submit an annual report.

(p) Informal and formal complaints may be filed against NEDBEDP certified programs, and the Commission may conduct such inquiries and hold such proceedings as it may deem necessary.

(q) Certified programs must include the NDBEDP whistleblower protections in appropriate publications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–22522 Filed 9–19–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 16–185; DA 16–1033]

Second Meeting of the World Radiocommunication Conference Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the second meeting of the World Radiocommunication Conference Advisory Committee (Advisory Committee) will be held on October 24, 2016, at the Federal Communications Commission (FCC). The Advisory Committee will consider any preliminary views introduced by the Advisory Committee's Informal Working Groups.

DATES: October 24, 2016; 11:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Mullinix, Designated Federal Official, World Radiocommunication Conference Advisory Committee, FCC International Bureau, Global Strategy and Negotiation Division, at (202) 418–0491.

SUPPLEMENTARY INFORMATION: The FCC established the Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2019 World Radiocommunication Conference (WRC–19).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the Advisory Committee. Additional information regarding the Advisory Committee is available on the Advisory Committee's Web site, *www.fcc.gov/wrc-19.* The meeting is open to the public. The meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.* Comments may be presented at the Advisory Committee meeting or in advance of the meeting by email to: *WRC-19@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The proposed agenda for the second meeting is as follows:

Agenda

Second Meeting of the World Radiocommunication Conference Advisory Committee

Federal Communications Commission,
445 12th Street SW., Room TW–C305,
Washington, DC 20554

October 24, 2016; 11:00 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the First Meeting
4. NTIA Draft Preliminary Views and Proposals
5. IWG Reports and Documents Relating to Preliminary Views
6. Future Meetings
7. Other Business

Federal Communications Commission.

Troy F. Tanner,

Deputy Chief, International Bureau.

[FR Doc. 2016–22528 Filed 9–19–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10316, Gulf State Community Bank, Carrabelle, Florida

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Termination of Receivership.

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Gulf State Community Bank, Carrabelle, Florida ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Gulf State Community Bank on November 19, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: September 15, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–22576 Filed 9–19–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 13, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

FEDERAL REGISTER NOTICE OF PREVIOUS ANNOUNCEMENT: 81 FR 62500.

CHANGE IN THE MEETING: This meeting was continued on September 15, 2016.

This meeting also discussed:

Internal personnel rules and internal rules and practices.

Investigatory records compiled for law enforcement purposes or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2016–22725 Filed 9–16–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission

DATE AND TIME: Thursday, September 15, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

FEDERAL REGISTER NOTICE OF PREVIOUS ANNOUNCEMENT: 81 FR 62889.

THE FOLLOWING ITEMS WERE ALSO DISCUSSED:

Promoting Voluntary Compliance
Proposed Statement of Policy on the Application of the Foreign National Prohibition to Domestic Corporations Owned or Controlled by Foreign Nationals
Statement of Vice Chairman Steven T. Walther Regarding Proposal to Rescind Advisory Opinion 2006–15 (TransCanada) and to Open a Rulemaking to Ensure that U.S. Political Spending is Free from Foreign Influence

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–22716 Filed 9–16–16; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974

CMS Computer Match No. 2016–08; HHS Computer Match No. 1606; Effective Date—April 2, 2016; Expiration Date—October 2, 2017

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Corrected Notice of Computer Matching Program (CMP).

SUMMARY: This notice is being republished in its entirety to correct the expiration date published in the heading of the notice at 81 FR, 8075, February 17, 2016. The expiration date should read October 2, 2017 instead of October 2, 2016. In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the re-establishment of a CMP that CMS plans to conduct with the Internal Revenue Service (IRS), a Bureau of the Department of the Treasury.

DATES: *Effective Dates:* The matching program described in the matching notice published on February 17, 2016 became effective on April 2, 2016, based on that notice; this notice, correcting the expiration date of the matching program and republishing the full text of the matching notice, is effective upon publication. The effective date of the Computer Matching Agreement (CMA) is April 2, 2016. The following review periods elapsed prior to April 2, 2016: thirty (30) days from the date CMS published the February 17, 2016 Notice of Computer Matching in the **Federal Register**; thirty (30) days from the date the matching program report was transmitted to the Congressional committees of jurisdiction consistent with the provisions of 5 U.S.C. 552a(r), (o)(2)(A), and (o)(2)(B); and forty (40) days from the date the matching program report was sent to OMB, consistent with the provisions of 5 U.S.C. 552a(r) and OMB Circular A–130, Revised (Transmittal Memorandum No. 4), November 28, 2000, Appendix I, entitled "Federal Agency Responsibilities for Maintaining Records about Individuals" (A–130 Appendix I).

ADDRESSES: The public may send comments to: CMS Privacy Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Enterprise Information, CMS, Room N1–24–08, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kane, Acting Director, Verifications Policy & Operations Division, Eligibility and Enrollment Policy and Operations Group, Center for Consumer Information and Insurance Oversight, CMS, 7501 Wisconsin Avenue, Bethesda, MD 20814, Office Phone: (301) 492–4418, Facsimile: (443) 380–5531, e-mail: *Elizabeth.Kane@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or

denying an individual's benefits or payments.

This matching program meets the requirements of the Privacy Act of 1974, as amended.

Walter Stone,

Privacy Act Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2016–08

HHS Computer Match No. 1606

NAME:

"Computer Matching Agreement between the Department of Health and Human Services, Centers for Medicare & Medicaid Services, and the Department of the Treasury, Internal Revenue Service, for the Verification of Household Income and Family Size for Insurance Affordability Programs and Exemptions".

SECURITY CLASSIFICATION:

Unclassified.

PARTICIPATING AGENCIES:

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and Department of the Treasury, Internal Revenue Service (IRS).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

Sections 1411 and 1413 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the ACA) require the Secretary of HHS to establish a program for determining eligibility for certain state health subsidy programs, and certifications of exemption; and authorize use of secure, electronic interfaces and an on-line system for the verification of eligibility.

Section 1414 of the ACA amended 26 U.S.C. § 6103 to add paragraph (l)(21), which authorizes the disclosure of certain items of return information as part of the Eligibility Determination process for enrollment in the following state health subsidy programs: advance payments of the premium tax credit (APTC) under Sections 1401, 1411 and 1412 of the ACA; cost-sharing reductions (CSRs) under Section 1402 of the ACA; Medicaid and the Children's Health Insurance Program (CHIP), under titles XIX and XXI of the Social Security Act, pursuant to Section 1413 of the ACA; or a State's Basic Health Program (BHP), if applicable, under Section 1331 of the ACA.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of the Computer Matching Agreement (CMA) is to re-establish the terms, conditions, safeguards, and procedures governing the disclosures of return information by IRS to CMS and by CMS to entities administering Medicaid, CHIP, or Basic Health Programs, and state-based Exchanges (also, called Marketplaces) through the CMS Data Services Hub to support the verification of household income and family size for an applicant receiving an eligibility determination under the ACA.

Return information will be matched by CMS in its capacity as the Federally-facilitated Exchange (also, known as the Federally-facilitated Marketplace) or by an administering entity for the purpose of determining eligibility for state health subsidy programs (APTC, CSR, Medicaid, CHIP or a BHP). Return information will also be matched for determining eligibility for certain certificates of exemption.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The matching program will be conducted with data maintained by CMS in the Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, as amended, published at 78 **Federal Register** (FR) 8538 (Feb. 6, 2013), 78 FR 32256 (May 29, 2013) and 78 FR 63211 (October 23, 2013).

The matching program will also be conducted with specified Return Information maintained by IRS in the Customer Account Data Engine (CADE) Individual Master File, Treasury/IRS 24.030, published at 77 FR 47948 (August 10, 2012).

INCLUSIVE DATES OF THE MATCH:

The effective date of the CMA is April 2, 2016, provided that the following review periods have lapsed: Thirty (30) days from the date CMS publishes a Notice of Computer Matching in the **Federal Register**; thirty (30) days from the date the matching program report is transmitted to the Congressional committees of jurisdiction consistent with the provisions of 5 U.S.C. §§ 552a (r), (o)(2)(A), and (o)(2)(B); and forty (40) days from the date the matching program report is sent to OMB, consistent with the provisions of 5 U.S.C. § 552a (r) and OMB Circular A–130, Revised (Transmittal Memorandum No. 4), November 28, 2000, Appendix I, entitled "Federal Agency Responsibilities for Maintaining Records about Individuals" (A–130 Appendix I). The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2016–22568 Filed 9–19–16; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS Computer Match No. 2016–10: HHS Computer Match No. 1607]

Privacy Act of 1974; Effective Date—April 2, 2016; Expiration Date—October 2, 2017

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Corrected Notice of Computer Matching Program (CMP).

SUMMARY: This notice is being republished in its entirety to correct the expiration date published in the heading of the notice at 81 FR, 8074, February 17, 2016. The expiration date should read October 2, 2017 instead of October 2, 2016. In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the re-establishment of a CMP that CMS plans to conduct with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS).

DATES: *Effective Dates:* The matching program described in the matching notice published on February 17, 2016 became effective on April 2, 2016, based on that notice; this notice, correcting the expiration date of the matching program and republishing the full text of the matching notice, is effective upon publication. The effective date of the Computer Matching Agreement (CMA) is April 2, 2016. The following review periods elapsed prior to April 2, 2016: Thirty (30) days from the date CMS published the February 17, 2016 Notice of Computer Matching in the **Federal Register**; Thirty (30) days from the date the matching program report was transmitted to the Congressional committees of jurisdiction consistent with the provisions of 5 U.S.C. 552a (r), (o)(2)(A), and (o)(2)(B); and forty (40) days from the date the matching program report was sent to OMB, consistent with the provisions of 5 U.S.C. 552a (r) and OMB Circular A–130, Revised (Transmittal Memorandum No. 4), November 28, 2000, Appendix I, entitled "Federal Agency Responsibilities for Maintaining Records about Individuals" (A–130 Appendix I).

ADDRESSES: The public may send comments to: CMS Privacy Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Enterprise Information, CMS, Room N1–24–08, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kane, Acting Director, Verifications Policy & Operations Division, Eligibility and Enrollment Policy and Operations Group, Center for Consumer Information and Insurance Oversight, CMS, 7501 Wisconsin Avenue, Bethesda, MD 20814, Office Phone: (301) 492–4418, Facsimile: (443) 380–5531, EMail: *Elizabeth.Kane@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

This matching program meets the requirements of the Privacy Act of 1974, as amended.

Walter Stone,

CMS Privacy Act Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2016–10

HHS Computer Match No. 1607

NAME:

"Computer Matching Agreement between the Centers for Medicare & Medicaid Services and the Department of Homeland Security, United States Citizenship and Immigration Services, for the Verification of United States Citizenship and Immigration Status Data for Eligibility Determinations"

SECURITY CLASSIFICATION:

Unclassified

PARTICIPATING AGENCIES:

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS)

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

Sections 1411 and 1413 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the ACA) require the Secretary of HHS to establish a program for determining eligibility for certain state health subsidy programs, and certifications of Exemption; and authorize use of secure, electronic interfaces and an on-line system for the verification of eligibility.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of the Computer Matching Agreement is to re-establish the terms, conditions, safeguards, and procedures under which USCIS will provide records, information, or data to CMS under the ACA. CMS will access USCIS data needed to make eligibility determinations in its capacity as a Federally-facilitated Exchange, and state agencies that administer Medicaid, a Basic Health Program, or the Children's Health Insurance Program, and State-based Exchanges will receive the results of verifications using USCIS data accessed through CMS Data Services Hub to make eligibility determinations.

Data will be matched by CMS for the purpose for determining eligibility for enrollment in state health subsidy programs and eligibility determinations for exemptions. Specifically, USCIS will provide CMS with electronic access to immigrant, nonimmigrant, and naturalized or derived citizen status information contained within or accessed by the USCIS Verification Information System. Access to this information will assist CMS in determining whether an applicant is lawfully present, a qualified non-citizen, a naturalized or derived citizen, and whether the 5 year bar applies and has been met in order to determine eligibility for the previously mentioned programs.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The matching program will be conducted with data maintained by CMS in the Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, as amended, published at 78 FR 8538 (Feb. 6, 2013), 78 FR 32256 (May 29, 2013) and 78 FR 63211 (October 23, 2013).

The matching program will also be conducted with data maintained by DHS in the Systematic Alien Verification for Entitlements (SAVE) System of Records Notice (SAVE SORN): DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records Notice, 77 FR 47415 (August 8, 2012).

INCLUSIVE DATES OF THE MATCH:

The effective date of the CMA is April 2, 2016, provided that the following review periods have lapsed: Thirty (30) days from the date CMS publishes a Notice of Computer Matching in the **Federal Register**; Thirty (30) days from the date the matching program report is transmitted to the Congressional committees of jurisdiction consistent with the provisions of 5 U.S.C. 552a (r), (o)(2)(A), and (o)(2)(B); and forty (40) days from the date the matching program report is sent to OMB, consistent with the provisions of 5 U.S.C. 552a (r) and OMB Circular A–130, Revised (Transmittal Memorandum No. 4), November 28, 2000, Appendix I, entitled "Federal Agency Responsibilities for Maintaining Records about Individuals" (A–130 Appendix I). The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2016–22567 Filed 9–19–16; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Risk Communication Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on November 7, 2016, from 8:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Natasha Facey, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3354, Silver Spring, MD 20993–0002, 301–796–5290, *Natasha.Facey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On November 7, 2016, the committee will discuss and make recommendations on FDA's draft Strategic Plan for Risk Communication and Health Literacy. The purpose of the Strategic Plan for Risk Communication and Health Literacy is to clarify how the Agency can communicate the benefits and risks of FDA-regulated products to target audiences more effectively, and so promote better informed decision making. The committee will also hear presentations on some of FDA's external communications and how these communications relate to the draft Strategic Plan for Risk Communication and Health Literacy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 1, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. to 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 21, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 25, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sheryl Clark at *Sheryl.Clark@fda.hhs.gov* or 240–402–5273 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 13, 2016.

Janice Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–22553 Filed 9–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2648]

Announcement of Requirements and Registration for the 2016 Food and Drug Administration Naloxone App Competition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 2016 FDA Naloxone App Competition (Competition), a prize competition under the America COMPETES Reauthorization Act of 2010 (COMPETES Act). The Competition is an effort to help reduce deaths associated with prescription opioid and heroin overdose by seeking innovative approaches to help reduce preventable harm associated with opioids. Specifically, the goal of this Competition is to spur innovation around the development of a low-cost, scalable, crowd-sourced mobile phone application that helps increase the likelihood that opioid users, their immediate personal networks, and first responders are able to identify and react to an overdose by administering naloxone, a medication that reverses the effects of opioid overdose.

DATES: The Competition begins September 20, 2016.

1. Registration for the Competition: September 23 to October 7, 2016
2. Naloxone App Code-a-Thon: October 19 and October 20, 2016
3. Submission Period: September 23 to November 7, 2016

FOR FURTHER INFORMATION CONTACT: Marisa Cruz at *naloxoneapp@fda.hhs.gov*, or 240–402–6628.

SUPPLEMENTARY INFORMATION:

I. Background

In 2014, nearly 2 million Americans aged 12 years or older either abused or were dependent on opioid painkillers (Ref. 1). In 2014, 61 percent of drug overdose deaths involved either an opioid painkiller or heroin. Between 2013 and 2014, deaths from any opioid increased 14 percent (Ref. 2). Naloxone is an antidote for an opioid overdose, whether from prescription opioids or heroin. It is a prescription drug, with generally minimal side effects, that is frequently used to reverse the effects of opioid overdose in emergency rooms and on ambulances. Over recent years, many States have taken steps to make it easier for both first responders and laypersons, including family and friends of opioid users, to carry and administer naloxone (Ref. 3).

Even with naloxone increasingly available in the community, however, persons carrying naloxone may not be on hand when an opioid overdose occurs. There is still the practical need to connect the individual experiencing the opioid overdose quickly and effectively with an individual carrying naloxone. Mobile phone applications (apps) have been developed to educate laypersons on opioid overdose and administration of naloxone (Refs. 4 and 5), and to connect bystanders with individuals in need of other medical services (Ref. 6). In a randomized, controlled trial, researchers demonstrated that a mobile-phone positioning system to dispatch laypersons trained in cardiopulmonary resuscitation (CPR) was associated with significantly increased numbers of bystander-initiated CPR procedures on persons with out-of-hospital cardiac arrest (Ref. 7). To date, however, we are not aware of an app that has been developed to connect carriers of naloxone with nearby opioid overdose victims.

II. Subject of Competition

The Competition encourages computer programmers, public health advocates, clinical researchers, entrepreneurs, and innovators from all disciplines to create teams focused on the development of innovative strategies to combat the rising epidemic of opioid overdose. Specifically, the Competition invites submissions for an app that increases the likelihood of timely naloxone administration by connecting opioid users experiencing an overdose with nearby naloxone carriers. FDA is most interested in concepts that are readily scalable, free or low-cost to the end-user, and take advantage of existing systems for naloxone distribution and use. FDA's expectation is that any app developed through the Competition will be used with FDA-approved naloxone products. For additional background information on the Competition, participants can access *http://www.Challenge.gov*.

Interested parties may register for the Competition at *http://www.Challenge.gov* beginning on September 23, 2016; participants are highly encouraged to register as teams, but individual applicants will also be accepted. The Competition will be conducted in two phases. Phase 1 will consist of a code-a-thon hosted at the FDA campus in Silver Spring, Maryland, for registered entrants to develop their concepts and initial prototypes for an app that alerts carriers of naloxone to a nearby opioid overdose. Entrants are encouraged, but not required, to participate in the code-a-thon. The code-a-thon will occur on October 19 and October 20, 2016. All code developed through the code-a-thon will be made open-source and publicly accessible on the GitHub platform, a Web-based code repository. The code-a-thon event space is limited to the first 50 individuals who indicate interest in onsite participation during the registration process (see Section IV). There will be a virtual component to the code-a-thon for the first 100 individuals who indicate interest in remote participation during the registration process. In Phase 2, all registered entrants will refine their concepts and develop a functional prototype, a video of which will be submitted on *http://www.YouTube.com* by the submission deadline. The video will be accompanied by a short summary of the prototype, as detailed in this document, which will be submitted on *http://www.Challenge.gov*.

Federal Agency subject matter experts will provide background and technical information to entrants on topics including, but not limited to, the opioid epidemic, uses of approved formulations of naloxone, and regulatory science considerations. During all phases of app development, all entrants should consider strategies to minimize legal risk and maximize regulatory compliance, including for the developer and the end-user. To ensure adequate consideration of potential liability, privacy, and regulatory concerns, FDA strongly encourages all entrants to obtain independent legal counsel.

FDA is sponsoring the Competition and will be providing entrants with technical expertise from the National Institute on Drug Abuse (NIDA) and the Substance Abuse and Mental Health Services Administration (SAMHSA). Specifically, NIDA and SAMHSA will each provide one judge with experience in relevant fields including drug use and misuse, clinical trial design, development of mobile medical applications, and public health. Additionally, NIDA and SAMHSA will provide information to Competition entrants at the code-a-thon on key issues, including (1) patterns of opioid use and misuse, (2) characteristics of populations at risk of opioid overdose, and (3) data collection and evaluation considerations.

Entrants may not test or evaluate their app using real people, including opioid users and naloxone carriers, during the Competition. Following the Competition, entrants may consider seeking grant funding from the NIDA Small Business Innovation Research (SBIR) program to further develop and bring to scale Competition concepts through testing and evaluation. As with all other National Institutes of Health (NIH) funding applications, NIDA staff will provide dedicated assistance and guidance about the NIH grant submission process, including submissions for the NIDA SBIR grants. The SBIR grant program is open to all small businesses (which may include Competition entrants) that meet applicable eligibility requirements set forth in the SBIR funding opportunity announcement. More information is available at *http://grants.nih.gov/grants/guide/pa-files/PA-16-302.html*. For Competition entrants and projects that meet all applicable SBIR requirements, the NIDA SBIR program may provide the opportunity to further develop Competition concepts through field testing and evaluation.

The primary goal of the Competition is to reduce death from opioid overdoses by expanding access to naloxone, in support of the Federal Government's mission to protect and advance public health. The secondary goals of the Competition are:

- To increase public awareness about naloxone and its role in reducing death from opioid overdoses; and
- To promote open government and citizen participation to improve innovation in the Federal Government.

III. Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this Competition, an entrant (individual or entity):

- Shall have registered and entered a submission on *http://www.Challenge.gov* and *http://www.YouTube.com* under the rules promulgated by FDA;
- Shall have complied with all the requirements under this section;
- Shall be (1) an individual or team of U.S. citizens or lawful permanent residents of the United States, each of whom is 18 years of age and over; or (2) an entity incorporated in and maintaining a primary place of business in the United States. Foreign citizens can participate as employees of an entity that is properly incorporated in the United States and maintains a primary place of business in the United States;
- May not be a Federal entity or Federal employee acting within the scope of their employment. An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.
- Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award. Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.
- Employees of FDA, NIDA, SAMHSA, and/or any other individual or entity associated with the development, evaluation, or administration of the Competition as well as members of such persons' immediate families (spouses, children, siblings, parents), and persons living in the same household as such persons, whether or not related, are not eligible to participate in the Competition.
- Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in the Competition, whether the injury, death, damage, or loss arises through negligence or otherwise.
- Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities. Entrants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in the Competition.
- By participating in the Competition, each entrant agrees to comply with and abide by the rules of the Competition and the decisions of FDA and/or the individual judges, which shall be final and binding in all respects.
- Each entrant agrees to follow all applicable local, State, and Federal laws and regulations.

IV. Registration Process for Participants

Registration for this Competition will open on September 23, 2016. To register, visit *http://www.Challenge.gov,* search for the 2016 FDA Naloxone App Competition, and follow the instructions. Entrants will receive an email confirming registration and participation in the code-a-thon, if applicable.

V. Submission Requirements

All written, digital, or recorded materials must be in English.

Submissions are required to include:

1. A video of the functional app prototype, not more than 5 minutes in duration, uploaded to *http://www.YouTube.com;* and
2. A written summary of the app, not to exceed three pages, submitted on *http://www.Challenge.gov.* This document should detail:

- A description of the entrant(s), including relevant fields of expertise;
- A summary of the concept for the app, including identification of the target audience;
- A general description of the proposed technical design, including an explanation of any planned interfaces between the app and existing systems or datasets; and
- The URL for the uploaded YouTube video.

To submit the written summary of the app, visit *http://www.Challenge.gov,* search for the 2016 FDA Naloxone App Competition, click on Submit Solution, and follow the instructions. For additional detail on required components of a submission, and the minimum requirements for the proposed app, participants may access the rules for the Competition posted at *http://www.Challenge.gov.*

VI. Amount of the Prize

At the conclusion of judging after Phase 2 of the Competition, the highest-scoring entrant will receive an award of $40,000.

The award approving official for this Competition is the FDA Associate Commissioner for Public Health Strategy and Analysis (Peter Lurie). Following the Competition, all entrants eligible for SBIR grants may also apply for a NIDA SBIR award, as announced in the NIH SBIR funding opportunity announcement, in order to research, develop, and evaluate app performance and utility.

VII. Payment of the Prize

The prize awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. FDA will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

VIII. Basis Upon Which Winner Will Be Selected

A panel of judges with experience in the fields of mobile medical application development, public health, and/or regulatory science chosen by FDA will select the highest-performing entrant from the pool of eligible submissions.

Judging of eligible submissions will be fair and impartial, and based upon the following evaluation criteria, with equal weighting.

- *Innovation:* Uniqueness and innovation in use of software and data analytics to fulfill the mandatory requirements; variety and value of additional features (weight 25 percent).
- *Usability:* Use of design elements to increase utilization among both people at risk of opioid overdose and naloxone carriers; ease of navigation; appropriate use of an interface to support the app in achieving desired outcome (weight 25 percent).
- *Functionality:* Potential to enhance the frequency and speed of naloxone administration by the carriers to the overdose victims (weight 25 percent).
- *Adaptability:* Potential for app to be tailored to the practical environment (*e.g.,* urban, rural) of an individual community (weight 25 percent).

IX. Additional Information

FDA reserves the right to suspend, postpone, terminate, or otherwise modify the Competition, or any entrant's participation in the Competition, at any time at the discretion of the Agency. FDA also reserves the right to not award a prize if no submission is deemed worthy. All decisions by FDA regarding adherence to Competition rules are final.

To receive the prize, entrants will not be required to transfer their intellectual property rights to FDA. Each entrant retains any applicable intellectual property rights to their submission. By participating in the Competition, each entrant hereby grants to FDA, and any third-parties acting on FDA's behalf an irrevocable, paid up, non-exclusive, royalty-free, worldwide license and right to reproduce, publicly perform, publicly display, and use the entrant's submission for government purposes, and to publicly perform and publicly display the entrant's submission video, including, without limitation, for advertising and promotional purposes relating to the Competition.

Additionally, each participant at the code-a-thon will be required to provide FDA with an open source version of the code written by the participant at the code-a-thon to be posted on the GitHub source code repository and made publicly available under the Creative Commons license, CCO 1.0 Universal (CCO 1.0, Public Doman Dedication). For a summary and full text of the CCO 1.0 Universal license, see *https://creativecommons.org/publicdomain/zero/1.0/.* The GitHub source code repository is accessible at *https://github.com.*

X. Statutory Authority To Conduct the Challenge

FDA is conducting this Challenge under section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

XI. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Centers for Disease Control and Prevention. "Prescription Drug Overdose Data." Accessed September 9, 2016, at *http://www.cdc.gov/drugoverdose/data/overdose.html.*
2. Rudd, R.A., N. Aleshire, J.E. Zibbell, and R.M. Gladden. "Increases in Drug and Opioid Overdose Deaths—United States, 2000–2014." *Morbidity and Mortality Weekly Report,* 2015;64: 1–5. Accessed September 9, 2016, at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm64e1218a1.htm.*
3. Network for Public Health Law. "Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws." Accessed September 9, 2016, at *https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.*
4. Substance Abuse and Mental Health Services Administration. "Opioid Overdose Prevention Toolkit." Accessed September 9, 2016, at *http://www.samhsa.gov/capt/tools-learning-resources/opioid-overdose-prevention-toolkit.*
5. U-turn. *http://www.u-turntraining.com/apps/.* Accessed September 9, 2016.
6. PulsePoint. *http://www.pulsepoint.org.* Accessed September 9, 2016.
7. Ringh, M., M. Rosenqvist, J., Hollenberg, et al. "Mobile-Phone Dispatch of Laypersons for CPR in Out-of-Hospital Cardiac Arrest." *New England Journal of Medicine,* 2015; 372:2316–2325.

Dated: September 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22550 Filed 9–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 0937–0191–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0937–0191, which expires on December 31, 2016. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before November 21, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–5683.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier 0937–0191–60D for reference.

Information Collection Request Title: Information Collection Request Title: Application packets for Real Property for Public Health Purposes.

Abstract: The Office of Assistant Secretary for Administration, Program Support Center, Federal Property Assistance Program requesting OMB approval on a previously approved information collection, 0937–0191. The Federal Property and Administrative Services Act of 1949 (Pub. L. 81–152), as amended, provides authority to the Secretary of Health and Human Services to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions which (except for institutions which lease property to assist the homeless) have been held exempt from taxation under Section 501(c)(3) of the 1954 Internal Revenue Code, and 501(c)(19) for veterans organizations, for public health and homeless assistance purposes. Transfers are made to transferees at little or no cost.

Need and Proposed Use of the Information: State and local governments and non-profit institutions use these applications to apply for excess/surplus, underutilized/unutilized and off-site government real property. These applications are used to determine if institutions/organizations are eligible to purchase, lease or use property under the provisions of the surplus real property program.

Likely Respondents: State, local, or tribal units of government or instrumentalities thereof; not-for-profit organizations.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Applications for surplus Federal real property	15	1	200	3,000
Total	15	1	200	3,000

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–22520 Filed 9–19–16; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review.

Date: October 6–8, 2016.

Time: 06:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Deca, 4507 Brooklyn Ave. NE. I, Seattle, WA 98105.

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–4773, *sukharem@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; 2017–01 Mentored Career Development Award (K) Application Review.

Date: November 4, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; JHU Translational Immuno-Engineering BTRC (2017/01).

Date: November 20–22, 2016.

Time: 7:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Blvd., Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Dated: September 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22531 Filed 9–19–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: October 6–7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton San Diego Mission Valley, 901 Camino Del Rio South, San Diego, CA 92108.

Contact Person: Sung Sug Yoon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, Bethesda, MD 20892, *sungsug.yoon@nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.

Date: October 13, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard Gaithersburg Washingtonian Ctr., 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Olga A. Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: October 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Solamar, 435 6th Avenue, San Diego, CA 92101.

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892–7892, (301) 402–6297, *pileggia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Disorders.

Date: October 14, 2016.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypertension and Microcirculation.

Date: October 14, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: October 17–18, 2016.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: October 18–19, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: October 18–19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: October 18, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Craig Giroux, Ph.D., Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–LM–16–002: BD2K Predoctoral Training in Biomedical Big Data Science.

Date: October 18, 2016.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Adult Psychopathology.

Date: October 18, 2016.

Time: 3:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22530 Filed 9–19–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on October 12, 2016, 12:00 p.m.–2:00 p.m. (EDT). This open session will be a continued discussion on Treatment Quality Issues from the August 24, 2016 open session meeting.

The meeting will be held via teleconference. This open meeting session may be accessed by the public via telephone. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before October 5, 2016. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before October 5, 2016. Five minutes will be allotted for each presentation. To obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAT national Advisory Council Designated Federal Officer; Tracy Goss (see contact information below). Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee Web site at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment, National Advisory Council.

Date/Time/Type: October 12, 2016, 12:00 p.m.–2:00 p.m. EDT, Open.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov.*

Dated: September 15, 2016.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2016–22551 Filed 9–19–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0106]

Agency Information Collection Activities: Application To Pay Off or Discharge an Alien Crewman

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Pay Off or Discharge an Alien Crewman (Form I–408). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before October 20, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email (*CBP_PRA@cbp.dhs.gov*). Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1*.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 33542) on May 26, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application to Pay Off or Discharge an Alien Crewman.

OMB Number: 1651–0106.

Form Number: I–408.

Abstract: CBP Form I–408, Application to Pay Off or Discharge an Alien Crewman, is used as an application by the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States to obtain permission from the Secretary of the Department of Homeland Security to pay off or discharge an alien crewman. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I–408 is authorized by Section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for 8 CFR 252.1(h). This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms*.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: September 14, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch U.S. Customs and Border Protection.

[FR Doc. 2016–22514 Filed 9–19–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0033]

Agency Information Collection Activities: Report of Medical Examination and Vaccination Record, Form I–693; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 10, 2016, at 81 FR 28884, allowing for a 60-day public comment period. USCIS did receive 17 comments from 6 commenters in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 20, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number [1615–0033].

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0074 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–693, USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–693 is necessary for USCIS to determine the eligibility of an applicant for lawful permanent resident status, creating a potential public health risk or denying the applicant an immigration benefit to which he or she may be legally entitled.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–693 is 574,000 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,435,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $283,412,500.

Dated: September 14, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–22532 Filed 9–19–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0060]

Agency Information Collection Activities: Medical Certification for Disability Exceptions, Form N–648; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 21, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0060 in the subject box, the agency name and Docket ID USCIS–2008–0021. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0021;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0021 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–648; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the Form N–648 to substantiate a claim for an exception to the requirements of section 312(a) of the Act. Only medical doctors, doctors of osteopathy, or clinical psychologists licensed to practice in the United States are authorized to certify Form N–648.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–648 is 17,302 and the estimated hour burden per response is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 34,604 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $912,681.

Dated: September 14, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–22519 Filed 9–19–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–09–B]

Affirmatively Furthering Fair Housing: Assessment Tool for Public Housing Agencies—Information Collection: Solicitation of Comment 30-Day Notice Under Paperwork Reduction Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA), on the Public Housing Agencies (PHA) Assessment Tool. On March 23, 2016, HUD solicited public comment for a period of 60 days on the PHA Assessment Tool. The 60-day notice commenced the notice and comment process required by the PRA in order to obtain approval from the Office of Management and Budget (OMB) for the information proposed to be collected by the PHA Assessment Tool. This 30-day notice takes into consideration the public comments received in response to the 60-day notice, and completes the public comment process required by the PRA. With the issuance of this notice, and following consideration of additional public comments received in response to this notice, HUD will seek approval from OMB of the PHA Assessment Tool and assignment of an OMB control number. In accordance with the PRA, the assessment tool will undergo this public comment process every 3 years to retain OMB approval. HUD is committed to issuing a separate Assessment Tool for Qualfied PHAs (QPHAs) that choose to conduct and submit an individual AFH or for use by Qualified PHAs that collaborate among multiple QPHAs to conduct and submit a joint AFH. For this reason, this Assessment Tool will be for use by non-Qualified PHAs, and for collaborations among non-Qualified PHAs and QPHAs.

DATES: *Comment Due Date:* October 20, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: George D. Williams, Sr., Office of Fair

Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5249, Washington, DC 20410; telephone number 866–234–2689 (toll-free). Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The 60-Day Notice for the PHA Assessment Tool

On March 23, 2016, at 81 FR 15549, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for approval of the PHA Assessment Tool. The PHA Assessment Tool was modeled on the Local Government Assessment Tool, approved by OMB on December 31, 2015, but with modifications to address the differing authority that PHAs have from local governments, and how fair housing planning may be undertaken by PHAs in a meaningful manner. As with the Local Government Assessment Tool, the Assessment Tool for PHA allows for collaboration with other PHAs. The 60-day public comment period ended on May 23, 2016, and HUD received 39 public comments. The following section, Section II, refers to submission requirements for Moving to Work (MTW) Public Housing Agencies. Section III highlights changes made to the PHA Assessment Tool in response to public comment received on the 60-day notice, and further consideration of issues by HUD, and Section IV provides guidance on the PHA region and regional analysis. Lastly, Section V responds to the significant issues raised by public commenters during the 60-day comment period, and Section IV provides HUD's estimation of the burden hours associated with the PHA Assessment Tool, and further solicits issues for public comment, those required to be solicited by the PRA, and additional issues which HUD specifically solicits public comment.

II. Submission Requirements for Moving to Work (MTW) Public Housing Agencies

For MTW PHAs submitting an individual AFH, the first AFH shall be submitted no later than 270 calendar days prior to the start of:

(A) For MTW PHAs whose service areas are located within the jurisdictional boundaries of a local government subject to the submission requirements outlined in § 5.160 of the AFFH rule, and are completing the AFH by themselves using the Assessment Tool for Public Housing Agencies, the program year that begins on or after January 1, 2019 for which the local government's new consolidated plan is due as provided in 24 CFR 91.125(b)(2).

(B) For MTW PHAs whose service ares are not located within the jurisdictional boundaries of a local government subject to the submission requirements outlined in § 5.160 of the AFFH rule, and are completing the AFH by themselves using the Assessment Tool for Public Housing Agencies, the fiscal year that begins on or after January 1, 2019 for which a new Annual MTW Plan is due as provided in the Moving To Work Standard Agreement (The Standard Agreement). The Standard Agreements are available at: *www.hud.gov/mtw.*

If either of the submission deadlines would result in the MTW PHA not having 9 calendar months with the final Assessment Tool for Public Housing Agencies, HUD will establish a new submission date for those MTW PHAs. MTW PHAs are encouraged to partner with their local governments and conduct a joint or regional AFH using the Assessment Tool for Local Governments and/or with a PHA, in which case the MTW PHA would follow the lead submitter's submission date. HUD intends on providing additional guidance to MTW PHAs on how to incorporate actions and strategies into Annual MTW Plans that address AFH goals.

Second and Subsequent AFHs

(A) After the first AFH, subsequent AFHs shall be submitted no later than 195 calendar days prior to the start of the fiscal year that begins five years after the fiscal year for which the prior AFH applied. All MTW PHAs shall submit an AFH no less frequently than once every 5 years, or at such time agreed upon in writing by HUD and the MTW PHA. 24 CFR 5.160(d). Given that MTW PHAs submit annual MTW Plans, the MTW PHA should only submit an AFH prior to the fiscal year that is 5 years after the prior AFH submission.

III. Changes Made to the PHA Assessment Tool

The following highlights changes made to the Assessment Tool for Public Housing Agencies in response to public comment and further consideration of issues by HUD.

Qualified PHA (QPHA) Insert. HUD has added an insert for use by QPHAs that collaborate with non-qualified PHAs. The insert is meant to cover the analysis required for the QPHA's service area. In addition to the QPHA insert, HUD is committed to creating a separate QPHA assessment tool.

Contributing factors. HUD has added several contributing factors based on recommendations from the comments from the public. HUD has also made slight changes to the descriptions of some of the existing contributing factors in light of comments received. These include: Inaccessible public or private infrastructure; Involuntary displacement of survivors of domestic violence; Lack of local or regional cooperation; Lack of public and private investment in specific neighborhoods, including services or amenities; Laws, policies, regulatory barriers to providing housing and supportive services for persons with disabilities; Nuisance laws; Restrictions on landlords accepting vouchers; Siting selection policies, practices and decisions for publicly supported housing; Source of income discrimination. The following contributing factors were removed from the appendix as they were not listed in any of the AFH sections: Inaccessible buildings, sidewalks, pedestrian crossings, or other infrastructure; Lack of assistance for housing accessibility modifications; Lending discrimination; Local restrictions or requirements for landlords renting to voucher holders

Disparities in Access to Opportunity. HUD has made changes to the structure of the questions in the Disparities in Access to Opportunity section, such as reducing the number of questions in the Disparities in Access to Opportunity section, making the use of the table that includes the opportunity indices optional, and removing portions of questions that referenced PHAs' waiting lists. HUD no longer specifically calls out the protected class groups for which it is providing data in the questions themselves. Instead, the specific protected class groups will be called out in the instructions for the particular question. HUD has also limited these questions to the protected class groups for which HUD is providing data. Furthermore, HUD has made clear that the policy-related questions at the end of each subsection should be informed by community participation, any consultation with other relevant government agencies, and the PHA's own local data and local knowledge.

Disability and Access. HUD has added two new questions to the Disability and Access section of the Assessment Tool. These questions relate to the PHA's interaction with individuals with disabilities.

Instructions. HUD has made clarifying changes to the instructions to the Assessment Tool, including with respect to the use of local data and local knowledge, additional examples of groups to consult during the community participation process, and additional clarifying instructions in the disparities in access to opportunity section based on the changes made to the questions in that section. In the instructions related to the Disparities in Access to Opportunity section of the Assessment Tool, regarding the HUD-provided data, HUD has also made clear that PHAs should only rely on the maps, rather than the opportunity index table; however, the table will still be provided should PHAs wish to make use of its contents. HUD has also included additional guidance in the instructions with respect to data sources that may be particularly relevant for assessing disability and access issues in the PHA's service area and region. HUD has also provided general and question-by-question instructions for the QPHA insert.

Fair Housing Analysis of Rental Housing. HUD has clarified the analysis for this section that the analysis applies to PHAs that administer Section 8 Housing Choice Vouchers. This will reduce burden for public housing to only PHAs.

Enhancements for PHAs in the Data and Mapping Tool. While the AFFH Data and Mapping Tool will remain substantially similar in most respects for PHAs as currently provided for local governments, there are some specific enhancements that are planned. These include the addition of maps and tables specifically designed for PHAs as well as enhanced functionality for displaying information on the maps.

The enhanced functionality will allow a PHA to view the location of its own public housing developments and housing choice vouchers. Users will be able to identify individual PHAs and use the relevant maps to show the locations of the public housing developments and HCVs for that PHA, or to view all such HUD assisted units that are already currently provided in the tool (In the current Data and Mapping Tool, these are Maps 5 and 6. Map 5 shows the location of individual housing developments in four program categories (public housing, project-based section 8, Other HUD Multifamily (Section 202 and 811) and LIHTC). Map 6 shows the location of Housing Choice Vouchers by concentration).

PHAs and the public should be aware that program participants will not be required to begin conducting their assessments until the full array of online resources, including both the Data and Mapping Tool and the User Interface are complete and operational for PHAs.

To assist PHAs in their assessments, HUD will be adding two additional maps and two additional tables that are designed to assist with specific questions in the assessment tool. One map will show the percent of housing units that are occupied by renters (by census tract). This first map is based on existing maps in the CPD-Maps tool (*https://egis.hud.gov/cpdmaps/*). This map is being added for both local governments and for PHAs. A second map map will show the locations of private rental housing that is affordable for very low-income families. This is intended to inform the analysis of the location, or lack thereof, of private affordable rental housing. Finally, two new tables will be provided showing tenant demographics for the PHA's own assisted residents. Examples of these tables, showing the intended type and format of the information to be provided was included as part of the 60-Day PRA release.

IV. PHA Region

Please note that a regional analysis is required for all program participants. Under the AFFH rule, the region is larger than the jurisdiction. For PHAs, under the AFFH rule, the jurisdiction is the service area. Unlike local governments and States, PHAs, including QPHAs, have service areas that range from the size of a town to match the boundaries of a State. The region that PHAs will analyze under the AFFH rule thus depends on the service area. For purposes of conducting a regional analysis, HUD identifies the following potential approach regarding geographies as regions for PHAs:

PHA jurisdiction/ service area	PHA region
Within a CBSA	CBSA.
Outside of a CBSA and Smaller than a County or Statistically Equivalent (*e.g.,* Parish).	County or Statistically Equivalent (*e.g.,* Parish).
Outside of a CBSA and Boundaries Consistent with the County.	All Contiguous Counties.
State	State and Areas that Extend into Another State or Broader Geographic Area.

A regional analysis is of particular importance for PHAs' fair housing analyses because fair housing issues are often not constrained by service area boundaries. Additionally, PHAs may be limited by their available housing stock, and, in order to afford full consideration of fair housing choice and access to opportunity for residents in the service area, a larger regional analysis is necessary. For example, one PHA may identify segregation as a fair housing issue because their housing stock, and therefore their residents, who are members of a particular protected class group, are located in only one part of the service area. The PHA therefore may identify the location and type of affordable housing as a contributing factor for this issue because the only affordable housing in the jurisdiction is located in that particular part of the City. For the PHA to understand the options for addressing this fair housing issue, the PHA must not only assess where other affordable housing is located in the region, but also consider the regional patterns of segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity and disproportionate housing needs, by protected class. In the context of public housing agencies, regional coordination can be especially important to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities. When considering a regional approach to addressing fair housing issues the PHA may consider Housing Choice Voucher portability and shared waiting lists; mobility counseling, increasing use of Small Area Fair Market Rents to set payment standards at the sub-market level; use of Project-Based Vouchers as siting mechanism in higher opportunity areas, including in conjunction with LIHTC; and use of expanded PHA jurisdictional authority to administer vouchers outside its boundaries. The public is invited to provide feedback on this proposed approach.

V. Public Comments on the PHA Assessment Tool and HUD's Responses

General Comments

General comments offered by the commenters included the following:

The structure of the tool is not suitable for PHAs. A commenter stated that the assessment tool for PHAs too closely mimics the Assessment Tool for local jurisdictions in the burden that it will place on entities that must use it to complete their AFHs. Another commenter stated that if a PHA partners with local housing PHAs across the State, ranging from very rural areas to urban areas, to administer day-to-day operations of the HCV program, the structure of the Assessment Tool is very complex and would require an analysis of a vast portion of the State. Another commenter stated that the tool is a centralized directive that does not take into account a community's local needs or priorities in how the PHA or community wants to allocate its scarce resources. The commenter stated that PHAs have a mandate to continue meeting local needs but this forces them to prioritize fair housing activities. Another commenter stated that the tool ignores the real-world constraints under which entities operate. A commenter asked HUD to have PHAs identify and prioritize portions of the tool so that over a number of cycles, the entire tool could be completed. Another commenter stated that the tool should be a streamlined document that provides a broad overview of the AFH process to PHAs, illustrate their various options among the other tools, clarify that the AFH duty applies to Moving to Work Agencies, and do a quick walkthrough of the process of completing the PHA tool.

HUD Response: HUD appreciates the commenters' views and input. HUD will continue to evaluate ways to reduce burden for PHAs while also providing guidance, technical assistance and training to support PHAs in affirmatively further fair housing under the Fair Housing Act and complying with other fair housing and civil rights requirements. As such, HUD has made revisions to the Publicly Supported Housing, Disparaties in Access to Opportunity, and Disability and Access sections of the PHA Assessment Tool to guide PHAs in conducting a meaningful fair housing analysis while still being tailored to the operations and programmatic focus of PHAs and their respective service areas. HUD believes these revisions have eliminated duplicate analysis within the PHA tool.

Terminology clarification. Several comments focused on certain terms in the tool that commenters advised needed clarification. A commenter asked what is meant by "proximity to employment." A commenter asked what is an "adequate supply" of accessible housing. A commenter stated that the word "siting" should only be used in reference to new developments, and not used to refer to existing developments. The commenter stated that therefore, the description of the contributing factor "Siting selection policies, practices, and decisions for publicly supported housing, including discretionary aspects of Qualified Allocation Plans and other programs" should not use "siting" to reference "acquisition with rehabilitation of previously unsubsidized housing."

HUD Response: HUD thanks these commenters for requesting clarification. HUD's AFFH Rule Guidebook, available at *https://www.hudexchange.info/resource/4866/affh-rule-guidebook/,* may provide some clarification on terms commenters felt needed clarification. HUD also notes that past siting decisions may be contributing factors to a fair housing issue—and is included as part of the explanation of the contributing factor "Location and type of affordable housing." HUD agrees with the commenter that the siting selection policies contributing factor is meant to focus on new developments, but also includes the consideration of how those policies might target the "acquisition and rehabilition of previously unsubsidized housing" because it results in the creation of new affordable housing opportunities for which location should be considered. HUD notes that with regards to past siting decisions, the goal to overcome that contributing factor may not involve "re-siting" that development. In order to understand the fair housing issues affecting a community, it is important that past siting decisions be taken into consideration. While the past siting and zoning ordinances may have contributed to the concentration of Publicly Suported Housing in certain neighborhoods in a jurisdiction that are experiencing racial and ethnic concentration, the AFFH rule outlines how PHAs may undertake a balanced approach in considering place-based investments and mobility to deconcentate neighborhoods and help protected class group members that use PSH move into low-povery and integrated neighorhoods of opportunity. HUD's description of contributing factors in the appendix clarifies that existing publicly supported housing developments may be considered under the contributing factor "Location and type of affordable housing."

The tool is too burdensome. Commenters stated that the tool is too burdensome and PHAs do not have enough resources to complete an AFH. Commenters stated that PHAs will have to hire consultants because the assessment is too complex (which includes the analysis of the data and dissimilarity index) to be effectively completed by staff without specific statistical and mapping knowledge, and that it is hard to get a true estimate from a consultant at this point or figure out which consultant will provide high quality services. The commenters stated that this is an ineffective use of staff time. The commenters stated that resources that could be put into housing related tasks are being funneled into completing this tool. Another commenter stated that PHAs do not have the resources and run the risk of putting all of their energy and resources into doing the assessments, leaving nothing left to address the identified Fair Housing Issues. Another commenter asked that during the six weeks it will take to prepare the tool, how clients will be served, and what will happen if a PHA's high performance status drops because of the time being spent on the AFH.

HUD Response: HUD is sympathetic to all program participants who have limited capacity to conduct an AFH, and will continue to evaluate ways to reduce burden for PHAs, and all program participants, while still ensuring a meaningful fair housing analysis is conducted such that goals that will result in a material, positive change can be established. While HUD encourages PHAs and QPHAs to partner with Local Governments to jointly share the workload associated with the AFH fair housing analysis and planning requirements, HUD proposes a streamlined set of QPHA questions for analysis of their service areas independently and in collaboration with States, Local Governments and other PHAs in their vicinity whether they are within or outside of a CBSA. Moreover, HUD recognizes potential concerns program participants may experience due to devoting resources toward the AFH, and it is HUD's priority to provide guidance, technical assistance, and training to PHAs and all program participants as they workto conduct their AFHs as well as providing as much help it can in allaying other worries as a result of completing the AFH.

Funding is needed to complete the tool. Commenters stated that PHAs need funding to complete their AFHs. Commenters stated that the AFH does not recognize the zero-sum nature of a PHA's resource allocation, and that the President's FY 2017 budget proposal did not request additional money for PHAs and other participating entities to complete their AFH tools. Another commenter stated that it will have to spend subsidy or Capital Fund Program (CFP) money to complete the tool and this will take away from being able to maintain properties. A commenter stated that if HUD cannot provide additional funding, HUD needs to find ways to provide additional resources to all that need to complete an AFH.

HUD Response: HUD understands that program participants have limited resources and will continue to try to reduce burden. In addition, HUD will continue to provide guidance, technical assistance, and training to assist all program participants to as they work to conduct their assessments of fair housing. Additoinally, HUD will provide guidance, technical assistance, and training to assist PHAs, as well as other program participants, in compliance with their fair housing and civil rights obligations.

Allow waivers of the AFH if the PHA has insufficient funding or staff. A commenter suggested that without additional funding, HUD should accept waivers from PHAs to provide time to complete AFHs, especially those seeking to join efforts with neighboring PHAs and local governments.

HUD Response: Unfortunately, HUD cannot provide waivers for certain program participants with respect to the submission of an AFH. However, HUD has built in flexibility for program participants to collaborate to submit a joint or regional AFH, provided for at 24 CFR 5.156 of the AFFH Rule. Program participants may be able to adjust their program or fiscal years to align with other program participants in order to collaborate on an AFH.

Exempt small and qualified PHAs (QPHAs) from submitting an AFH. A commenter stated that QPHAs should be exempt because they lack funds and staff. Another commenter stated that slightly more than half of all PHAs manage fewer than 250 units and nearly 88 percent manage fewer than 500. The commenter stated that small PHAs have become leaner over the years and do not have the capacity to undertake the requirements of an AFH. Another commenter stated that if HUD will not exempt small and qualified PHAs, HUD should offer a significantly streamlined and simplified AFH tool for use by agencies with 550 combined units or fewer that will be of some use to them as they analyze steps they can take to AFFH.

HUD Response: HUD recognizes the challenges small PHAs in undertaking the requirements of completing the Assessment of Fair Housing. In keeping with this, HUD has added an insert to the PHA and Local Government Assessment Tools that may be used by QPHAs that are conducting a joint AFH with other non-qualified PHAs and local governments. Use of this insert may reduce burden for the QPHA in completing an Assessment of Fair Housing. As HUD has stated previously, HUD will continue to evaluate ways to reduce burden for all program participants, including smaller PHAs and QPHAs in complying with fair housing and civil rights requirements. HUD also notes that it is committed to creating a separate QPHA tool.

Concerns with the use of local data. A commenter suggested local data that PHAs need to rely on may not exist, and cited as examples, education and school proficiency data that the commenter stated can be difficult to obtain because some PHAs serve in areas where students can attend schools in multiple school jurisdictions across the entire metropolitan region, including outside the jurisdiction of the PHA. The commenter stated that HUD does not include protections for PHAs that claim they cannot compile or obtain local data. Another commenter stated that local data should be optional because the burden of collecting it is immense. A commenter suggested that HUD's Office of Policy Development and Research provide greater technical assistance to PHAs to help them complete the AFH, including training and webinars on data analysis, along with a cadre of experts who can assist PHAs in meeting this requirement.

HUD Response: HUD appreciates these comments. HUD notes that program participants need only use local data when it meets the criteria set forth in the AFFH rule at 24 CFR 5.152 and in the instructions to the Assessment Tool. HUD has also included clarification in the instructions to the Assessment Tool to make clear when local data must be used and HUD's expectations with respect to the use of such data. Specifically, HUD states in the instructions that program participants must use reasonable judgment in deciding what supplemental information from among the numerous sources available would be most relevant to their analysis. HUD later explains in the instructions that where HUD has not provided data for a specific question in the Assessment Tool and program participants do not have local data or local knowledge that would assist in answering the question, PHAs should note this, rather than leaving the question blank.

Define the boundaries of a region. A commenter stated that when HUD finalizes the regional data, it should clearly define the boundaries of the regions so that PHAs know exactly the regional area that must be covered in their analyses and therefore the extent of the data necessary to answer the template questions.

HUD Response: HUD appreciates this comment and will work to ensure the final data provides these boundaries.

Burden estimates are too low. Commenters stated that HUD's estimate that it will take one person working 40 hours a week for 6 weeks to complete, is far too low due to the complexity of the AFH. A commenter stated that PHA staff are knowledgeable on program regulations and laws pertaining to Fair Housing and 504 requirements, but not providing complex statistical data analysis. A commenter stated that it estimates that it will take three or four times as much as the 240-hour estimate, equivalent to almost one full time staff person when only four staff members are dedicated to the entire Section 8 program. The commenter stated that it is not reasonable for the AFH to take up to 25 percent of the administrative budget, but this is likely to happen if the State cannot combine efforts with its CPD formula programs. Another commenter stated that it estimates that it will take 1,4440 hours or 180 working days to complete the AFH. Another commenter stated that it estimates that completing the AFH will take longer than 240 hours and collaborating will not save any time due to the need for meetings, identifying responsibilities, and coming to agreement on the meaning of data.

A commenter stated that since HUD funding is at an all-time shortage, current staff have too many responsibilities to maintain the level of effectiveness as is, and the challenge to stay as viable as possible under these circumstances (with the lack of ability to use funds as effectively as Moving to Work PHAs), the burden of proposed collection places the burden "on a scale of 1 to 10 (10 being the backbreaker), 10!" Another commenter stated that program participants will commit a total of just under 1,000,000 person hours to AFH completion every five years or so, and that based on the estimates given in the notice of how many PHAs will submit and how much time each one takes, this will consume more than 100 person years annually. A commenter stated that the outreach portion alone can easily take more than 100 hours. The commenter stated that 5 public meetings with 5 staff in attendance for three hours (set up and staying after to answer questions) is already 75 hours, and that does not include preparing materials, marketing, arranging space, etc. Another commenter stated that HUD has revised the estimates and has estimated without evidence the populations of PHAs that will collaborate and submit independently. The commenter stated that if only half the PHAs choose to collaborate, the estimated burden would rise by almost 50,000 hours to 150 of HUD's current estimate. The commenter stated that HUD does not know how long it will take to prepare an AFH using any of the 3 tools published so far, and that HUD's assumptions about collaboration are not based in fact, and so HUD's estimate of burden is unsupported and probably inadequate.

HUD Response: HUD understands the concerns of these commenters, and will continue to evaluate ways to reduce burden for all program participants, including PHAs. In addition, HUD will also continue to provide guidance, technical assistance, and training as needed and appropriate, in an effort to build the capacity of program participants to undertake an Assessment of Fair Housing. In light of revisions being proposed for the AFH tools, HUD will continue to evaluate potential adjustments to burden estimates that are necessary for the applicable AFH Tools.

Electronic submission will help eliminate burden. Commenters stated that electronic submission is the only answer to eliminate any potential burden to provide the information by the agency. The commenters stated that this analysis seems to address all the areas of concern with the quality of information being asked for the agency to provide, but that too much information being asked could be a potential setback as in reviewing the maps in the tools, information can be confusing and difficult to find the information being sought because the maps become hard to read.

HUD Response: HUD agrees with these commenters and is continuing to work to provide PHAs with an electronic submission mechanism. HUD will continue to provide guidance, technical assistance, and training as needed and appropriate, to aid program participants in understanding how to read the HUD-provided maps.

Eliminate the local knowledge requirement. Commenter stated that it is a costly burden to obtain local knowledge and data because the PHA's service area covers most of the State. A commenter expressed concern about data availability or meaningfulness in rural areas. The commenter stated that the requirement to use local data here is burdensome. The commenter stated that there needs to be explicit instructions about what to do when there is no HUD provided data or no meaningful HUD provided data and local data or knowledge is not particularly useful.

HUD Response: HUD appreciates this commenter's suggestion, however, HUD notes that local knowledge is critical information that can provide context and clarity for the HUD-provided data, to supplement the HUD-provided data, and illuminate fair housing issues affecting a jurisdiction or region. However, HUD notes that the instructions to the Assessment Tool explain that where HUD has not provided data for a specific question in the Assessment Tool and program participants do not have local data or local knowledge that would assist in answering the question, PHAs should explain this, rather than leaving the question blank.

The Housing Choice Voucher (HCV) program does not fit an AFH analysis. Commenters stated that PHAs that primarily operate a voucher program, which promotes tenant choice and, under the HCV program, households ultimately choose their own housing, so many of the considerations of siting of future housing that could be addressed through a tool would not be germane. Another commenter stated that a PHA administering an HCV program can educate and provide information to voucher households about the characteristics of a neighborhood but that does not appear sufficient per the AFFH rule. The commenter stated that voucher households have the right to choose preferred rental housing unit despite information.

Other commenters stated that the HCV data is limited and does not allow AFH submitters to assess which PHAs have vouchers placed within a jurisdiction. The commenters stated that alternative data sets that include the number of vouchers by PHA is missing data for Moving to Work jurisdictions, which are often the larges PHAs in their region. Commenters stated that this data should be made available in the AFH data tool to permit a complete analysis of concentration patterns in the HCV program. The commenters stated that if a PHA jurisdiction contains a concentration of vouchers from other PHAs, this may be an important indicator of source of income discrimination in the other PHAs jurisdiction, and also that a PHA's mobility program is inadequate or that the PHA is steering voucher holders to specific areas in violation of the Fair Housing Act and its obligation to AFFH.

HUD Response: HUD respectfully disagrees with the commenters' assertion that the HCV program does not fit in the AFH analysis. HUD notes that program participants that are required to conduct and submit an AFH to HUD are specified by the AFFH rule at 24 CFR 5.154(b) and include PHAs receiving assistance under Sections 8 or 9 of the United States Housing Act of 1937. However, HUD will continue to evaluate different ways to portray data relating to the HCV program to assist PHAs in conducting a meaningful fair housing analysis. To operate the HCV program within a jurisdiction, PHAs undertake market analyses and rental reasonableness tests to understand the supply of available quality affordable housing units that are feasible for lease-up using the payment standards PHAs may set within the overall jurisdiction or in smaller FMR areas or neighborhoods within the PHA's jurisdiction.

The AFH has no practical utility. Commenters stated that the information asked by the PHA tool and required by the AFFH rule does not have practical utility and that it is not necessary to further the FHA's mandate to affirmatively further fair housing. A commenter stated that as an agency where the affordable housing has been in place for many, many years and the lack of funding to develop in areas of opportunity, the collection of data is not needed. The commenter stated that the PHA already understands the lack of affordable housing in areas of opportunity and obstacles to develop in these areas; any data collection will just support this argument for the need to develop in these areas. Commenters stated that the AFH requires PHAs to set fair housing goals for activities that are out of their control. Commenters stated that it does not make sense to have an entity that does not have authority to achieve these goals conduct the analysis both because the entity would not have specialized knowledge of the field and because equitable considerations would stress that the entity responsible for achieving the goals should be the one conducting the analysis. Commenters stated that the AFH requires them to set goals outside of their scope of control, and they may misjudge the extent to which achieving these goals is feasible since these goals may be in areas outside of their day-to-day experience. Other commenters stated that the tool requires PHAs to analyze factors that may have been decided decades ago (like siting decisions) and make conclusions about impediments to fair housing (like zoning and permitting) that are out of their control. Commenters advised that the following areas are outside of a PHA's experience or control: School assignment policy (HCV programs will need to create tools to discover the schools voucher holders' children attend to investigate, large agencies' participant households sent their children to a large number of school districts), employment opportunities (PHAs may know where participants work but do not have knowledge of access to employment opportunities and do not influence where employers choose to locate or where skillsets match up), access to transportation (PHA's have little to say in establishing or changing transit routes or schedules), geographic distribution of people with disabilities (HUD has acknowledged a lack of data), whether Olmstead plans have been implemented (PHAs exercise little or no influence over institutions where people with disability may be housed and lack the expertise to evaluate appropriateness, and have no more control over the contents of a plan than any member of the public), and whether people with disabilities have access to public infrastructure (PHAs are in the same position as other members of the public when it comes to infrastructure outside of their physical assets).

HUD Response: HUD respectfully disagrees with these commenters. HUD acknowledges that PHAs may already understand the fair housing issues and contributing factors afffecting in their service areas, and have limited control over certain areas of analysis contained in the AFH; however, those areas are part of the community in which the PHA is located and may have an affect or impact on fair housing in the PHA's service area and region. In order to best understand the fair housing issues affecting the PHA's service area and region, PHAs must take a holistic approach in analyzing their fair housing landscape in order to set appropriate goals that will allow the PHA to take meaningful actions that affirmatively further fair housing, including identifying policies and activities that may or may not be within their control. HUD also notes that the community participation process that is part of conducting an AFH may yield important information from members of the community about these issues for the PHA to consider as it conducts its AFH. HUD encourages PHAs to think creatively in approaching goals. HUD will provide some examples of goals specifically for PHAs when it updates the AFFH Rule Guidebook, and will provide guidance, technical assistance, and training to support all program participants as they work to conduct their AFHs.

The tool should facilitate a broad range of approaches to affirmatively furthering fair housing. Commenters stated that the rule emphasizes the importance of a balanced approach, but does not allow for the assessment and inclusion of community revitalization efforts. The commenters stated that a two-pronged approach that both increases access to areas of opportunity and improves neighborhood conditions is best. The commenters stated that HUD should honor the value and even necessity of preservation of affordable housing, wherever it is located, to prevent displacement and further racial and economic segregation in cities with substantially tightening rental markets. Other commenters stated that the lack of preservation related questions and guidance in the PHA tool suggests that development in non-impacted areas is simply a more legitimate goal than preservation of existing housing that is not within an "area of opportunity." The commenters stated that, for example, the PHA tool does not have questions directly assessing the preference of residents to remain in their own neighborhoods, even if segregated, or that help a PHA document that preservation and rehabilitation is the most appropriate way for the PHA to further fair housing while also respecting the rights of residents to remain in their homes and communities. The commenters stated that, in contrast, there is a preponderance of questions related to moving families away from the communities where they live, suggesting that HUD believes that preservation cannot be an important part of an acceptable strategy for meeting fair housing obligations. The commenters encouraged HUD to modify the tool to include more questions about preservation strategies and acknowledge that moving residents to areas of opportunity need not take precedence over providing existing, underserved communities with decent, safe, and sanitary affordable housing and improving neighborhood quality. The commenters stated that questions could include requests for information about community reinvestment and site-specific projects to restore deteriorated housing, and the instructions should also acknowledge that preservation is an appropriate fair housing tool for PHAs.

Another commenter stated that HUD should provide clearer directions in each of the "additional information" subsections to foster a more balanced assessment pertinent to the fair housing issue under consideration. The commenter stated that positive assets that should be listed include affordable housing preservation organizations and community-based development organizations that have long worked with residents to improve publicly supported housing and/or community living conditions. The commenter stated that fair housing choice must include residents' ability to choose to remain in their homes and communities, even if these are racially or economically concentrated areas of poverty (R/ECAPs).

A commenter stated that in Part V.D., questions for both the "Public Housing Agency Program Analysis" and the "Other Publicly Supported Housing Programs," ask PHAs to compare the demographics of developments to the demographics of the service area and region. The commenter expressed concern on how this will be interpreted because sensitivity to the wishes of existing residents must be paramount. The commenter stated that PHAs should describe the actions taken to determine residents' desire to move and the resources (and in what amounts) that have been used to improve the neighborhood in which the public supported housing development is located. The commenter stated that the "Additional Information" questions should require PHAs to describe efforts that have been made, are underway, or are planned to preserve Project Based Section 8 at risk of opting out of the program or prepaying the mortgage and exiting the program, or of other HUD multi-family assisted developments leaving the affordable housing stock due to Federal Housing Administration (FHA) mortgage maturity. The commenter stated that PHAs should describe efforts that are made, underway, or planned to preserve Low Income Housing Tax Credits (LIHTC) developments, including at Year 15 and beyond Year 30.

HUD Response: HUD appreciates the commenters' recommendations and will consider adding questions on how to evaluate tenant viewpoints on relocation and mobility from neighborhoods of concentration to more integrated areas. This will include HCV families and residents living in publicly supported housing properties in R/ECAPs and segregated neighborhoods.

HUD encourages a balanced approach to fair housing planning, as it stated in the preamble to the final AFFH rule, which may include a variety of strategies to affirmatively further fair housing, as appropriate, depending on local circumstances. HUD includes questions and contributing factors in the Assessment Tool that relate to both place-based and mobility strategies in order to assist program participants in determining how to set goals that will lead to the program participant ultimately affirmatively furthering fair housing. Conducting an analylsis that compares the demographics of the residents of publicly supported housing to the area in which it is located is necessary for a fair housing anlaysis. Specifically, for this Assessment Tool, conducting a development-by-development analysis and comparing the demographics of developments to the areas in which they are located is critical when a PHA is conducting a fair housing analysis of its jurisdiction.

Finally, HUD appreciates the suggestions of commenters relating to particular subjects that should be added to the "Additional Information" questions. HUD believes that these are all important areas of analysis, and will continue to consider whether they should be added to the questions, included in instructions, or provided for in guidance. HUD will consider questions on how to evaluate tenant viewpoints on relocation and mobility from neighborhoods of concentration to more integrated areas. HUD will also consider giving instructions in the PHA and Local Government Tools on community participation to solicit feedback on preservation of properties and resident relocation and mobility from R/ECAPs to more integrated neighborhoods of opportunity. These are issues PHAs may solicit feedback on in surveys, community participation meetings with residents of impacted developments, and public hearings.

The analysis of data is burdensome. A commenter stated that the sheer volume of data to be analyzed and the breadth of responsibility placed upon housing authorities are very troubling. The commenter stated that although there is discussion of housing authorities under 550 units, size alone cannot be the determining factor for the burden the rule will place; that PHAs with more units that operate in rural counties should be considered. The commenter also stated that the analysis and process is for naught when there is one high school and no public transportation, and the commenter asked about what happens if the town is under one census tract? The commenter stated that very rural towns and cities are not entitlement cities so there is no CDBG funding, and that many of these rural areas were hit hard in the recession and lost manufacturing jobs that are not coming back. The commenter stated that PHAs in these situations have limited resources and so do the communities, and that this time and money could be better spent addressing housing issues. Commenters stated that the instructions to Section VI of the tool acknowledge that PHAs may not be able to control all of these factors. The commenters asked HUD not to burden PHAs with extensive data collection and goal development for factors they cannot control and instead focus on those they can control. A commenter expressed concern that HUD provided data is not detailed enough to assess fair housing issues between rural and urban areas throughout its State and to complete the AFH. Another commenter expressed concern that there are significant gaps in HUD-provided national data that will impede PHAs in adequately assessing and addressing the fair housing needs of people with disabilities. The commenters stated that HUD should provide Federal data from the Medicaid program and from its own data collection. The commenter stated that while there may not be "uniform" data concerning people with disabilities similar to the data concerning race and ethnicity (especially those persons with disabilities who live in institutions or group homes), consideration of major sources of information should still be considered in order to include their consideration in fair housing planning.

Some commenters stated that much of the information requested through the tool exhibits practical utility but the significant data limitations (*e.g.* the ability to disaggregate ethnic groups, neighborhood level data, local data, etc.) preclude the ability to easily describe contextual factors that may demonstrate impacts to particular groups.

Several commenters stated that the HUD provided data is unwieldy and difficult to understand, and that, in some cases, it relies on complex social science indices whose meaning is largely unintelligible despite the guidance provided in the instructions and the AFFH Rule Guidebook. The commenters stated that the level of sophistication required to understand this information is at odds with the emphasis on public participation. Another commenter stated that the tool asks for data that does not exist and leaves agencies in danger of non-compliance when there is no way to comply.

HUD Response: HUD thanks these commenters for their views and recognizes that representitives of program participants may immediately feel overwhelmed; however, HUD will provide guidance, technical assistance, and training to assist all program participants in in building their capacity to analyze the data. As HUD has explained in an earlier response, it will continue to evaluate ways to reduce burden for program participants while still ensuring a meaningful fair housing analysis is conducted.

HUD also acknowledges the limits of the data it is providing to program participants, especially with respect to rural areas. HUD will continue to assess the feasibility of providing additional data sets that would assist program participants in conducting an analysis in rural areas. Similarly, HUD understands the limits of the data it is providing with respect to individuals with disabilities. HUD will also continue to assess the feasibility of providing additional data related to disability and access in the future. HUD will also continue to evaluate how it can provide data in as user-friendly a manner as possible and will continue to provide guidance, technical assistance, and training as needed and appropriate, to assist program participants in their use of HUD-provided data to complete an Assessment of Fair Housing.

HUD already has the information sought through the AFH: HUD should provide the analysis. Commenters stated that the tool requests information HUD already has. The commenters stated that demographics concerning public housing property residents and voucher holders is submitted through HUD Form 50058; HUD has participants' characteristics and the Census Bureau provides demographics of the jurisdiction's population so HUD can make comparisons with the income eligible population itself; HUD already has the locations of public housing properties and addresses of voucher holders so it should prepopulate the AFH tool with this data.

HUD Response: HUD thanks these commenters for their views, however, HUD believes it is important for PHAs to do their analysis to better understand the fair housing issues in their regions and service areas. Understanding the historical context, including policies that may have led to such issues will provide context for how program participants may seek to resolve them. HUD also notes the importance of program participants engaging with their communities in order to best understand the fair housing issues and contributing factors affecting their geographic areas of analysis. Thus, HUD is providing data that includes the demographics of residents and locations for certain categories of publicly supported housing to assist PHAs in conducting their fair housing analysis. PHAs must use the HUD-provided data, along with local knowledge and local data (when such local data and local knowledge meet the criteria set forth in 24 CFR 5.512 and the instructions to the Assessment Tool) when assessing fair housing issues.

Maps and tables are not easily workable. Several commenters expressed concern about the functionality of the maps and tables. Commenters stated that dot density maps do not work at a high level for every variable and HUD should reevaluate the type of mapping thematics. A commenter requested that AFFH data and mapping tools have the capability to group data based on the selection of numerous counties to build sub-State areas. Another commenter expressed concern that HUD provided data is not detailed enough to assess fair housing issues between rural and urban areas throughout its State and to complete the AFH. The commenter stated that HUD should include the margins of error in the data set since there is a great difference in the accuracy between rural and urban areas.

Other commenters stated that maps tailored to the needs of States, insular areas, and PHAs outside of CBSAs remain unavailable, posing a serious problem for PHAs and their stakeholders and commenter cannot assess utility of missing maps. The commenters stated that this is a problem for PHAs that must make decisions concerning their approach to AFH tool completion, such as whether or not to pursue a collaboration. The commenters suggested that HUD rescind all AFH notices and information collections until such time as all of HUD's maps and tables appropriate for each kind of entity that may be submitting an AFH are available.

Commenters stated that without the full functionality of the tables and maps, it is difficult to fully evaluate how the draft AT would work in conjunction with this data. The commenters stated that many of the sample maps are hard to read due in large part to their static nature (unable to zoom in or out, or otherwise adjust map settings). The commenters stated that HUD should strive to finalize the maps and tables as soon as possible, ideally before the initiation of the 30-day comment period. The commenters stated that if HUD cannot finalize the maps and tables, as it waits to gather information about PHA service areas, at minimum it should reference the titles of the relevant maps and tables within the instructions for individual tool questions.

Other commenters stated that regional maps should consistently denote the PHA service area as a frame of reference. Commenters stated that the analyses of the indices by national origin and familial status cannot be done since the index scores are not currently organized by protected group categories other than race/ethnicity, and HUD should make this data available for review. Commenters stated that the comparisons with HUD-provided maps (such as looking side-by-side at the national origin demographics map and the school proficiency index map) are almost impossible because the maps are incredibly difficult to use. Commenters stated that in sample tables 9 and 10, it is unclear whether the "% with problems:" Reflects the percentage of individuals in a specific protected group or the percentage of overall households with housing/severe housing problems. Commenters also stated that the data for household type and size need to be broken down further to reflect families with three, four, and five household members because family households with more than five people are not an appropriate proxy for families with children. Commenters stated that it is very difficult to use sample Maps 7 and 8 to answer subpart Question 2 in Disproportionate Housing Needs. The commenters stated that the dots are very clustered and cover most of the PHA service area so the various desegregations are impossible to decipher. Commenters stated that it is unclear from the data in tables 9–11 how a PHA can make the deductions required by the instructions for Disproportionate Housing Needs in Question 3, which seems to indicate that PHAs should read the data in the tables together to compare the needs of families with children for housing units with two, three, or more bedrooms with the available existing housing stock in each category of publicly supported housing. The commenters stated that HUD must provide guidance on how a PHA is to interpret data given in these tables to provide the requested analyses. Commenters stated that a color spectrum should be used to classify census geographies of note as dot density maps, as presented, have too much flexibility in visualization and could mislead some agencies and members of the public to false conclusions. The commenters stated that HUD should publish entire series of maps for each jurisdiction as a set of PDFs to easily share with the public, incorporate ACS data to ensure more up to date data for future submissions, and address limitations of non-disaggregated data to tell accurate story for existing and emerging groups.

HUD Response: HUD appreciates these suggestions from commenters relating to the usability of the data HUD is providing. HUD will continue to evaluate how to provide the data in the most user-friendly manner in order to help facilitate a meaningful fair housing analysis. HUD also appreciates the suggestions for disaggregating certain data, making tables and maps clearer and easier to understand or interpret, and adding additional protected class groups to the HUD-provided data. HUD will continue to consider these recommendations as it provides updates to the AFFH data and mapping tool. HUD also recognizes that the data has certain limitations, and will continue to assess how to best provide data for rural areas. HUD will also continue to provide guidance, technical assistance, and training as needed and appropriate, to assist program participants in building capacity to use the HUD-provided data when conducting an AFH.

HUD should provide additional data relating to persons with disability. Commenters recommended the following three part approach to data on people with disabilities: (1) HUD should provide PHAs with data readily available in the federal system, including data from Money Follows the Person and Medicaid home and community-based waiver programs and options, available from the Center for Medicare and Medicaid Services (CMS), data on people with disabilities living in nursing facilities and intermediate care facilities for individuals with developmental disabilities, available from CMS, and data on people with disabilities experiencing homelessness available in the HUD Homeless Management Information System and/or Annual Homeless Assessment Report databases; (2) Where HUD-provided national data are unavailable, instead of HUD permitting PHAs to assert that "data and knowledge are unavailable" HUD should require PHAs to seek out and use local data and knowledge; (3) HUD should provide additional guidance to PHAs as to the types of local data and knowledge that are likely to be available and how to find these. Commenters also stated that all disability data should be provided by age group, and PHAs should be required to consider this distinction in their analyses. The commenters stated that due to the lack of nationally uniform data, the instructions to the Disability and Access analysis section should strongly encourage PHAs to solicit input from community stakeholders about sources of local data and local knowledge. The commenters stated that HUD should make suggestions of places that might have local data.

HUD Response: HUD appreciates the recommendations of these commenters and agrees that to the extent feasible, HUD should provide disability-related data to program participants and the public to better facilitate a meaningful fair housing analysis related to individuals with disabilities. HUD will continue to seek out data sources that are nationally uniform that can be provided in the AFFH data and mapping tool in the future. Additionally, HUD notes that program participants are required to use local data and local knowledge to complete their AFH where that information meets the criteria set forth at 24 CFR 5.152 and in the instructions to the Assessment Tool, but ne only indicate that the program participant does not have local data or local knowledge to supplement the HUD-provided data. HUD notes that CMS data may be particularly relevant for program participants to consider and would welcome program participants' use of such data as they conduct their AFH. HUD notes that there are examples of sources of local data and local knowledge provided in the AFFH Rule Guidebook, and would encourage program participants and the public to evaluate whether those data may be useful in completing the AFH.

Demographic data for Low Income Housing Tax Credit (LIHTC) developments is needed. Commenters stated that tax credit units are vital to community development. The commenters stated that more important than completing an AFH is helping more people and building more tax credit units for families to live in. Commenters stated that LIHTC data does not include data on race, ethnicity, and other demographic data by project, which is collected by HUD annually pursuant to Section 2002 of the Housing Economic Recovery Act, and that without this data, PHAs cannot conduct a full assessment of the concentration of subsidized units and the demographics of those tenants. One commenter stated that PHAs and their subsidiary non-profits that are involved in the development and ownership of LIHTC developments have this data readily available, and their failure to include it should be a red flag.

Other commenters stated that the data provided on demographics of non-LIHTC assisted housing developments in Table 8 does not directly link to census tract demographics, creating an additional burden on submitters and undermining a key element of fair housing analysis.

HUD Response: HUD thanks the commenters for their input on LIHTC data. HUD acknowledges the limited availability of LIHTC data on tenant characteristics at the development level. HUD is continuing its efforts to collect and report on this data However,HUD notes that there are substantial barriers to providing LIHTC tenant data at the developmental level, including both the completeness of the data coverage and ongoing privacy concerns with releasing tenant information for small projects, which make up a significant portion of the LIHTC inventory. For example, commenters should also be aware that information at the development-level will often not be available due to federal privacy requirements and the small project sizes in a large portion of the LIHTC inventory. HUD encourages program participants to use local data and local knowledge, when such information meets the criteria set forth at 24 CFR 5.152 and in the instructions to the Assessment Tool, to complete this portion of the analysis.

The Assessment Tool's certification requirements create new legal liability for PHAs. Commenters expressed concern that the PHA Tool's Certification requirements may create new legal liability for PHAs. The commenters stated that by signing the Certification, PHAs may expose themselves to audits by HUD for failure to further the goals they set or they may be subject to lawsuits from parties who believe they have been injured by the fair housing impediments that the PHA described. The commenters stated that liability is created not by actual failure of the PHA to perform under the ACC or other agreements with HUD, but by virtue of the fact that the Assessment Tool requires PHAs to certify that they will take actions that they have neither the legal authority nor resources to take. Other commenters stated that liability exists in detailed levels within the Assessment Tool itself, and stated, as an example, the tool, in asking PHAs to assess past goals, effectively requires PHAs to make a public admission of wrongdoing which may promote litigation. The commenters stated that this question and the broader emphasis on failures should be removed. Commenters encouraged HUD to create a safe harbor standard for PHAs that act in good faith in determining the most relevant one (or two or three) data sets or political boundaries for use in completing the tool. Another commenter stated that the tool is not an effective means for HUD to enforce the AFH. The commenter stated that the tool runs the risk of punishing PHAs for lacking resources and may unintentionally create a spirit of animosity towards the concepts of fair housing instead of encouraging PHAs to be champions of fair housing.

HUD Response: HUD understands the concerns raised by these commenters, however, HUD notes that the AFH is a planning document., In order to effectively engage in fair housing planning, it is important for program participants to evaluate the past and current state of fair housing in their communities in order to set meaningful goals to overcome contributing factors and related fair housing issues. HUD also notes that the Assessment Tool provides opportunities for PHAs to identify past goals, strategies, and actions in order to allow the program participant to reflect on past progress or setbacks with respect to fair housing. The purpose of this portion of the assessment is to allow program participants to readjust their approach and make changes to any goals they may not have been able to achieve. Failure to achieve a goal set in an AFH does not necessarily mean the program participant has not met its statutory obligation to affirmatively further fair housing.

Consultation requirements. Commenters had a variety of comments on the consultation requirements. Commenters stated that the tool should require PHAs to consult with and reach out to a wide variety of organizations, including those that represent people who are members of the Fair Housing Act's protected classes because the regulations seek to have PHA plans informed by meaningful community participation. Other commenters stated that PHAs should be required to list all entities consulted and the dates consulted, so residents and advocates can assess if this was most appropriate. The commenters stated that a PHA should provide a written summary of the input offered through the consultation and attach this as an appendix to the Assessment Tool. Other commenters stated that since the tool is intended to be a guide for PHAs, and therefore residents and community participants, it should include examples of the types of groups PHAs could consider reaching out to. A commenter suggested that Resident Advisory Boards, resident councils, groups representing HCV households, people on waiting lists, community groups, affordable housing advocacy organizations, and legal services offices. Another commenter stated that PHAs should describe how community participation was both provided for and encouraged, and should present a detailed list (with date and time of day) of specific participation activities for various components of the stakeholder community. Another commenter stated that PHAs should be required to list organizations that submitted written comments and/or delivered remarks at public hearings, so that residents and advocates will be able to assess whether the groups that participated represent a balance of opinions.

Commenters stated that PHAs should be required to address the following: How meetings and events were held at times and places conducive to optimal participation (ex: Meetings on evenings and weekends); how PHAs assessed language needs and provided for translation of notices and vital documents, as well as provided interpreters for meetings and public hearings; how far in advance notice of meetings and events was provided, and the form of notification (mailings, postings in common areas of properties, easily identified notices on the PHA's home page, Listserv, notices in newspapers oriented to neighborhoods where PHA properties are located and in appropriate language, notices in newsletters of organizations serving various populations, PSAs, provisions for LEP persons, provisions for people with visual, hearing, or other communications disabilities, social media); discussions with residents of public housing to determine whether residents want to remain in their homes and communities or relocate to areas that may offer other opportunities; summarize all local knowledge and comments and explained why they were accepted or why not, and included as an appendix; outreach to tenants beyond a Resident Advisory Board, particularly underserved populations such as HCV holders and single mothers: Many developments may not even have a Resident Advisory Board; and efforts to conduct outreach to residents of public housing, Section 8 HCV holders, and persons eligible to be served by the PHA, and to briefly describe how documents associated with the AFH, including the draft AGH, were provided to public housing tenants, voucher holders, and other interested parties. Another commenter stated that HUD should amend Question 2 on page one to require PHAs to provide a list of stakeholders working in the areas of public health, education, workforce development, environmental planning or transportation. A commenter stated that the accompanying instructions should reference 24 CFR 903.17 which requires, in part, that the PHA makes the draft AFH and other required documents available for public inspection. Another commenter stated that the instructions and guidance should provide PHA-specific suggestions regarding advertising public meetings and hearings and recommended making the draft documents easily accessible. Another commenter stated that the instructions accompanying Question 2 should provide examples of the types of organizations with which PHAs may consult.

A commenter stated that by focusing on a community participation process that seeks to reach the "broadest audience possible," HUD forces PHAs to choose quantity over quality engagement by limiting the PHA's ability to focus engagement on those most impacted by impediments or barriers to fair housing as well as prioritize key demographics.

HUD Response: HUD appreciates these suggestions from commenters. PHAs are required to comply with the requirements for community participation, consultation, and coordination set forth in 24 CFR 5.158 and the requirements set forth at 24 CFR part 903. HUD has provided examples of groups that program participants may wish to reach out to in order to obtain certain information, input, or perspectives when conducting the community participation process in the AFFH Rule Guidebook. HUD will evaluate whether this guidance should be expanded in the future to include a list of statekholders the program participants should consult. Additionally, HUD notes that when conducting community participation, PHAs, and all program participants, must comply with the fair housing and civil rights requirements specified at 24 CFR 5.158, and encourages program participants to consider all audiences, especially those who may be impacted by their planning documents and who may not have had prior opportunities to share their feedback with the PHAs.

Waiting lists concerns. Commenters stated that most, if not all, housing authority developments exist in impacted areas so any waiting list applicant could be greatly impacted. The commenters opposed inclusion of data from families on the waiting list in completing the AFH since this information has not been verified and is limited, so it's difficult to make assumptions about any relevant factors related to the AFH. Commenters stated that some data is available for individuals on the waiting list, but commenter questions the relevancy as those on the list may need to wait years and circumstances may change. HUD should clarify the purpose it feels this serves. Other commenters stated that applicants apply for housing based on their desire to live in a specific area for a number of reasons, and data collected from the waiting list may not give all the needed information to provide an accurate analysis for fair housing. Another commenter stated that PHAs do not have historic waiting list data (data beyond the record retention period). The commenter stated that PHAs have data on households on waiting lists that include household members, disability status, student status, race, and ethnicity, and that waiting list household data is self-reported and not verified by PHA staff. A commenter stated that a PHA operates with multiple waiting lists, and that PHAs do not treat waiting list's data uniformly and have different amounts of information and may verify at different times. A commenter stated that it does not believe that analyzing individuals on the waiting list will yield useful information in fair housing planning because the demand for affordable and federally assisted housing far exceeds the supply, and families may be unable to move for reasons other than the PHAs action or inaction. Another commenter stated that certain types of tenant selection and waiting list management policies can have a discriminatory impact on persons in protected classes by making it more difficult for out-of-town families to gain admission or by creating barriers to people with disabilities. A commenter stated that if the tool is going to seek information on waiting lists, it should ask: If the PHA requires in-person applications at the PHA office or if applications can be obtained by mail or online or at multiple locations; if applications only accepted online, if the PHA uses a first-come first-served waiting list, or a lottery to determine placement on the waitlist; if the PHA keeps the waitlist open for a long enough time to permit applicants from outside the service area to apply; if the PHA applies any local preferences for program admission, and, if so, to describe; and how the PHA makes information available to people with limited English proficiency, and what accommodations it makes for people with disabilities.

HUD Response: HUD understands the limitations with respect to the information PHAs may have regarding the demographics of those individuals or households on the PHA's waiting list, and HUD has removed language related to this as a result of the commenters' suggestions. However, HUD notes that this information would be considered local data and local knowledge for purposes of conducting the AFH, and that information would have to meet the criteria set forth in 24 CFR 5.152 and the instructions to the Assessment Tool in order for its use to be required. Further, HUD notes that information about the PHA's waiting list may be provided as part of the community participation process. HUD appreciates the recommendations relating to information that should be sought with respect to waiting lists. While HUD is still requiring this analysis in parts of the Assessment Tool, HUD has reduced the number of questions that ask for analysis of the PHA's waiting list. Specifically, HUD has removed the waiting list references in the policy questions in the Disparities in Access to Opportunity section.

HUD will continue to consider whether additions of these sorts of questions to the Assessment Tool would be beneficial for conducting a meaningful fair housing analysis of the PHA's service area and region.

Suggestions for analyzing disparities in access to opportunity. Commenters offered several suggestions to the Disparities in Access to Opportunity section. With respect to Education, commenters stated that HUD should provide a clearer explanation of what the School Proficiency Index, stating that the AFFH data documentation fails to mention protected characteristics with respect to the School Proficiency index, so the relationship between it and the protected class status is left unclear. A commenter stated that HUD should define "attendance areas" and briefly explain how attendance areas are determined in the instructions, and that any explanation concerning the School Proficiency Index should differentiate between proximity to proficient schools and actual access to proficient schools. The commenter stated that the index has serious limitations since it is determined only by the performance of 4th grade students on state exams and, in some cases, in schools that are only within 1.5 miles of where individuals in protected groups are located. Another commenter stated that question iii(1)(a)(iii) should not be limited to prompting discussion about access to proficient schools by protected class members who are public housing residents, voucher tenants, and families families on the waiting lists for these programs for these programs, but instead should ask about those who still experience disparities in educational outcomes, such as graduation rates, test scores, and other performance measures. The commenter stated that instructions should specifically ask about disparities in educational outcomes for students who attend proficient schools.

With respect to employment, a commenter stated that the tool should ask PHAs to describe actions complying with Section 3 obligations and a description, if appropriate, of planned efforts to overcome underperformance. Another commenter stated that the job proximity index does not take into account the skill level needed for jobs or the jobs that are actually available so therefore just because individuals in a protected group may live in area close to jobs, it does not necessarily mean that they have better access to job opportunities. The commenter stated that HUD should find a means by which to measure other forms of human capital, such as prior job experience, skills, or training.

With respect to transportation, a commenter stated that it is unclear how the low transportation cost and transit trips indices provide information on access to transportation by protected groups because of several factors including the absence of key maps (such as a map of residency patterns of protected groups overlaid by shading showing transportation access at the neighborhood level) and a lack of clarity on what the low transportation cost index measures. The commenter stated that the two variables from the instructions (low transportation cost index measures the "cost of transport and proximity to public transportation by neighborhood") seem different from each other because it's possible for individuals have relatively low transportation costs (higher score) and no proximity to public transit (lower score), as when there is no public transit available and people drive short distances to work. The commenter asked that, in these situations, how one index score can measure two variables that can be very different from each other. The commenter stated that since the transit index scores only measures the frequency of transit use, these scores do not measure transportation access. Another commenter stated that in the transportation opportunities section, the language "connection between place of residence and opportunities" should be restored, since access to transit alone is not enough if it does not connect residents to opportunities.

With respect to access to low poverty neighborhoods, a commenter stated that there are limitations to the low poverty index because the calculation method compares national and tract-level data, making it unsuitable for judging the relative position of a tract in a city or region. The commenter stated that the instructions refer to a Question (1)(d)(iv) that does not exist. With respect to access to environmentally healthy neighborhoods, a commenter stated that this data is limited since it only covers air toxins, is outdated, and according to the EPA, is only valid for large geographic areas, like regions and States. Another commenter stated that in the access to environmentally healthy neighborhoods section, there should be a specific question about the access of families in PHA programs to environmentally healthy neighborhoods and whether they are disproportionately exposed to environmental hazards and undesirable land uses. PHAs should be required to discuss indicators of environmental health based on local data and knowledge because it is not burdensome to acquire. Another commenter stated that limiting the required analysis of environmental hazards to the air quality data provided by HUD renders the analysis incomplete and misleading, and participants must be required to analyze other indicators from local data. The commenter presented three specific examples within the State of Texas to illustrate this point. The commenter stated that vulnerability to the effects of a natural disaster should also be considered as part of the environmental hazards assessment.

HUD Response: HUD appreciates all of the suggestions related to the data on disparities in access to opportunity, and in response to these comments, HUD no longer requires that such indices be reviewed by PHAs, although they may choose to refer to the indices. HUD also recognizes that the data provided has certain limitations, which are explained in the instructions to the Assessment Tool, the AFFH Rule Guidebook, and the Data Documentation, available at *https://www.hudexchange.info/resource/4848/affh-data-documentation/*. HUD has rewritten the questions in the Disparities in Access to Opportunity Section to more specifically address the HUD provided data that will offer the most utility in conducting this analysis, specifically the HUD-provided maps. While the opportunity indices will still be available for PHAs to use, only the maps are now required to be analyzed to complete this analysis. Through using the maps, PHAs can see where areas of opportunity are for the various opportunity categories and how they relate to their residents by protected class groups (race/ethnicity, national origin, families with children).

Addtionally, HUD has changed the policy related questions to emphasize that PHAs' analysis will rely on community participation, any consultation with other relevant government agencies, and the PHA's own local data and local knowledge. HUD encourages program participants to use local data and local knowledge to supplement the HUD-provided data where such information meets the criteria set forth at 24 CFR 5.152 and in the instructions to the Assessment Tool. HUD will continue to evaluate whether it is feasible to provide additional or other data with respect to disparities in access to opportunity in manner that would be nationally uniform and facilitate a meaningful fair housing analysis.

With respect to the suggestion to include a question about educational outcomes for students who attend proficient schools, HUD believes that while this is an important analysis to undertake, it is beyond the scope of the Assessment of Fair Housing. HUD, however, encourages program participants who wish to include such information in their analysis to do so.

HUD has also re-phrased the question in the transportation section of the Disparities in Access to Opportunity section of the Assessment Tool raised by the commenters. That question now asks, "For the protected class group(s) HUD has provided data, describe how disparities in access to transportation relate to residential living patterns."

HUD also appreciates the commenters concerns about the environmental health index's limitations. In order to provide for a more robust assessment relating to access to environmentally healthy neighborhoods without imposing additional burden on program participants, HUD has included additional contributing factors for consideration, such as "access to safe, affordable drinking water" and "access to sanitation services." HUD encourages program participants to include other relevant environmental hazards in their analysis or in identifying contributing factors.

Comments on Publicly Supported Housing. Commenters stated that in the section on "Other Publicly Supported Housing Programs" there should be a question or data reporting opportunity that looks at the overall concentration of assisted housing in particular neighborhoods. Other commenters stated that the Publicly Supported Housing Analysis section emphasizes questions concerning the location and occupancy of publicly supported housing, with limited questions about access to opportunity by residents, and no questions about disproportionate housing needs specific to the context of publicly supported housing. Another commenter stated that this section should ask about access to community assets (including proficient schools, transportation, employment, social services, green space, job training, and community centers) by residents of public housing, such as amenities within and in close proximity to publicly supported housing developments. Another commenter stated that this section does not touch on issues such as access to supportive or other services by residents of publicly supported housing. The commenter stated that currently, PHAs would put this information in the "Additional Information" section but featuring such questions more prominently is likely to get the it thinking about the ways in which the PHA and other publicly supported housing in the PHA's service area and region are themselves providing access to opportunity via promoting access to community assets and other necessary services. Another commenter stated that under the Publicly Supported Housing Analysis, the tool should ask how many individuals are turned away from public housing because of prior evictions and how many of these prior evictions are due to non-payment of rent or other factors that are not indicative of relevant qualifications.

HUD Response: HUD appreciates these suggestions from commenters, and will consider improved ways to structure this section that will solicit the appropriate level of information from PHAs and is the least burdensome. Also, since PHAs must conduct an analysis of disparities in access to opportunity and disproportionate housing needs in prior sections of the Assessment Tool, HUD did not want to add duplication of effort to the publicly supported housing section. HUD also notes that information relating to prior evictions, non-payment of rent, or other qualifications relating to admissions and occupancy policies of PHAs are assessed through the contributing factor of "admissions and occupancy policies and procedures, including preferences in publicly supported housing." HUD also notes that information relating to whether eligible individuals or households are able to access publicly supported housing could be obtained through the community participation process.

Comments on Public Housing Agency Program. A commenter stated that in the section on "Public Housing Agency Program Analysis", PHAs should be asked whether tenants in RAD developments have been informed about their choice/mobility rights, and whether the PHA has offered tenants any assistance in making moves to lower-poverty areas. Another commenter stated that the location of project-based voucher developments should be analyzed separately from the location of tenant-based vouchers because of important fair housing issues related to site selection of PBVs. The commenter stated that the simplest approach would define the "PHA's developments" to include developments where the PHA has project-based vouchers in addition to properties the PHA owns. The commenter stated that this can be incorporated in Part D(1)(b)(i) on pg. 9 of the tool and the explanation of Publicly Supported Housing Analysis beginning on page 27 should also include specific references to PBVs.

A commenter stated that PHAs should be asked to evaluate their programs in terms of addressing sexual harassment, related to domestic violence, and the location of senior and family housing developments and demographics of these developments. Another commenter stated that even though sexual orientation, gender identity, and marital status are not unequivocally covered by the Fair Housing Act, they are protected from discrimination in HUD's Final Rule on Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, so PHAs should be required to analyze barriers to fair housing choice affecting these populations. A commenter stated that PHAs should be required to do an analysis of their policies and procedures regarding persons re-entering from the criminal justice system, to evaluate the condition and maintenance needs of its properties by geographic area and demographics of each property, and to analyze their homeownership programs as well as their rental programs.

HUD Response: HUD appreciates the recommendation regarding mobility and RAD, and will consider whether they are appropriate to the analysis, while also considering the level of burden in completing the AFH. HUD also appreciates these comments and agrees with the commenter that an assessment of a PHA's programs in terms of addressing sexual harassment, related to domestic violence, and the location of senior and family housing, including the demographics of those developments is critical when conducting a fair housing analysis. HUD has added the contributing factors of "involuntary displacement of survivors of domestic violence," "nuisance laws," and "lack of safe, affordable housing options for survivors of domestic violence." Additionally, HUD notes that some of the HUD-provided data includes the demographics of families with children and elderly households in certain types of assisted housing.

Comments on Fair Housing, Enforcement, Outreach Capacity and Resources Analysis. In the section on "Fair Housing Enforcement, Outreach Capacity, and Resources Analysis" the reporting of fair housing complaints and investigations should include any consent decrees, settlement agreements, or Voluntary Compliance Agreements that are still in effect. Another commenter stated that under Fair Housing compliance and infrastructure, include questions on enforcement of discrimination against victims of domestic violence under VAWA. Another commenter stated that Question (c)(v) of the Fair Housing Analysis of Rental Housing subsection should acknowledge the risk of losing access to opportunity for other publicly supported housing residents besides HCV households. The commenter stated that this question should also include a prompt that acknowledges the risk of losing access to opportunity through unwanted displacement. The commenter stated that a third prompt should read, "Are at risk of losing affordable rental housing units, including a landlord's choice to end participation in the Housing Choice Voucher program, or loss of affordability restrictions in other publicly supported housing programs (*e.g.,* opting-out from a project-based Section 8 contract)." A commenter stated that HUD should require the PHA to briefly explain its efforts to comply with HUD's LEP guidance and to otherwise provide meaningful access to LEP populations. The commenter stated that this section should include questions that ask the PHA to briefly explain its efforts to serve domestic violence and sexual assault survivors, including steps it has taken to comply with VAWA.

HUD Response: HUD thanks the commenters for these recommendations. HUD notes that the question relating to civil rights compliance does include consent decrees, settlement agreements, or voluntary compliance agreements that are still in effect. HUD declines to add enforcement against discrimination against victims of domestic violence under the Violence Against Women Act to this section, but notes that it has added certain contributing factors to prior sections of the Assessment Tool, as noted above. HUD has also added the contributing factor of "Lack of meaningful language access" to the publicly supported housing section of the Assessment Tool to allow PHAs to assess their efforts to comply with HUD's LEP guidance and their efforts to provide meaningful access to LEP populations.

Comments on disproportionate housing needs. Commenters stated that the section on disproportionate housing needs should include data and analysis on the population of people experiencing homelessness that are currently un-housed. A commenter stated that specifically reference the commitments the US made during the Universal Periodic Review to invest further efforts in addressing the root causes of racial incidents and expand its capacity in reducing poverty in neighborhoods experiencing subpar services and amend laws that criminalize homelessness that are not in conformity with international human rights. Another commenter stated that under disproportionate housing needs the tool should ask for a description about laws that may impact victims of domestic violence. A commenter suggests that PHAs can use information regarding survivors that they are already required to report under federal and local laws, since VAWA mandates that PHAs are required to include address the housing needs of survivors in their planning documents. A commenter stated that when discussing affordability of housing units in the definitions section and throughout, it is important to clarify that it is not enough to have units that are affordable at 80% area median income or other moderate incomes.

HUD Response: HUD appreciates these comments. HUD has added the contributing factor "Access to public space for people experiencing homelessness" to the disproportionate housing needs section. HUD will continue to evaluate the feasibility of providing data on homelessness such that it will facilitate a meaningful fair housing analysis. As previously stated in this Notice, HUD has added three contributing factors relating to victims of domestic violence. HUD notes that certain data it is providing include demographic data based on income eligibility for certain HUD assisted housing, and those data are provided for 30%, 50%, and 80% AMI income levels.

Comments on Instructions. A few commenters stated the instructions that accompany the tool are adequate, but other commenters stated that the instructions are not effective as there are over 2 pages of instructions per page of the tool and they are repetitive and internally inconsistent. The commenters offered, as an example, that HUD quotes regulatory language concerning the character of acceptable local data without providing guidance on the standards HUD will use to determine its statistical validity or an objective standard. The commenters stated that the instructions are also hard to navigate and it is time consuming. Commenters offered various wording changes for specific instructions, but many commenters stated that what would be most helpful is for HUD to provide examples.

Commenters stated that the instructions should offer examples of likely sources of local knowledge important to residents, such as university studies and experiences of advocacy organizations, service providers, school districts, and health departments. Commenters stated that the instructions should provide examples of local knowledge such as efforts to preserve publicly-supported housing, community-based revitalization efforts, public housing Section 18 demolition or disposition application proposals, RAD conversion proposals, transit-oriented development plans, major redevelopment plans, comprehensive planning or zoning updates, source of income ordinance campaigns, and inclusive provision campaigns. Other commenters stated that the instructions should provide examples of real strategies that PHAs could employ to obtain the information necessary to answer the questions that require the use of local data and should draw connections between a specific opportunity indicator and the PHA where a particular indicator intersects with existing PHA operations. A commenter stated that would be most helpful is for thud to provide a complete sample AFH to show the level of analysis required.

Another commenter stated that the instructions should provide clear guidance on how PHAs should read the tables with indices that are organized by protected group. A commenter stated that a shorter pamphlet that explains the difference between the tools and provides links to other sources of information would be useful.

HUD Response: HUD thanks the commenters for their feedback. HUD has provided additional clarifying language to the instructions with respect to the use of local data and local knowledge. HUD also understands the difficulty with the format of the Assessment Tool and the instructions coming at the end. HUD notes that it intends to provide PHAs, as it has done for Local Governments, with an online portal (User Interface) that will allow for electronic submissions and will provide the instructions for each question immediately before the question itself. HUD anticipates that this format will be more user-friendly for PHAs.

HUD declines to provide additional examples of local data and local knowledge in the instructions at this time, but notes that examples are provided in the AFFH Rule Guidebook. The AFFH Rule Guidebook also offers guidance relating to the community participation process and may be useful to PHAs in soliciting views relating to the issues commenters raised above. HUD also notes that it will continue to provide guidance, technical assistance, and training, as needed and appropriate with respect to the use of HUD-provided data in order to build capacity of PHAs so that they may conduct a meaningful fair housing analysis.

QPHA Collaboration. Commenters stated that, in reviewing the goal of the assessment tool, the collaborating organizations need current data to enable them to fairly assess the data and provide a good plan in addressing the need for housing in areas of opportunity. A commenter stated that it believes small agencies will find collaboration generally the most acceptable way to fulfill their AFH responsibilities although still notes the complexity and lack of current information. Another commenter stated that it plans to collaborate with the local government in submitting its tool so the collaborating organizations can plan and implement a comprehensive approach to fair housing. The commenter stated that since the PHA has no jurisdiction over certain conditions in the municipality, such as transportation and education, in the absence of a partnership a PHA would be limited in its ability to conduct meaningful fair housing planning. Another commenter stated that it believes that most PHAs will collaborate with local governments because they are most likely to have had pre-existing relationships with PHAs.

A commenter stated that it does not intend to submit a joint AFH, but that it will work with entities including the state Department of Housing and Community Development, local governments, and PHAs in the sharing of data resources and local knowledge. Another commenter stated that some of its PHA members would not be collaborating with other entities at all. The commenter stated that they are concerned about problems such as fear of free riders, the prospect of one entity slowing down the entire collaborative process, and the difficulty of collaborating in some rural areas where the entities may not be geographically proximate. Another commenter stated that it would take at least an additional 33 percent of the estimated time to complete an AFH for collaborative efforts. The commenter stated that HUD should account for the fact that if a PHA determines that it makes the most sense to complete the PHA tool on their own, they will still be expected to participate in their local jurisdiction's AFH for aspects related to PHA-specific issues which adds to the administrative hours.

HUD Response: HUD thanks the commenters for their views related to QPHA collaboration. HUD also appreciates the commenter sharing that it will work with entities including the state Department of Housing and Community Development, local governments, and PHAs despite not collaborating with another program participant. However, HUD maintains its position and encourages collaboration to the extent practicable. In fact, HUD has provided a sample agreement in the AFFH Guidebook that includes language stipulating what each entity will be responsible for, which may alleviate any confusion or lack of contributions within the collaboration.

Facilitating QPHA Collaboration. A commenter stated that HUD should do more to encourage PHAs to prepare joint AFHs by providing clearer guidance, incentives, and funding. The commenters stated that, in particular, HUD should clarify which PHAs should complete an AFH on their own and which PHAs should submit jointly with other neighboring PHAs or local government entities. The commenters stated that, for example, a PHA with less than 250 units who participates in a joint AFH might be eligible for additional technical assistance, time, and the ability to sync their PHA plan with neighboring PHAs to encourage cooperation and joint strategies. Another commenter stated that HUD staff would have to review and accept in a timely manner 3,153 PHAs' AFHs and over 1,200 local jurisdictions' AFHs, so having PHAs submit joint AFHs will assist HUD in reviewing them.

A commenter stated that increased data flexibility and integration across tables and maps would support individual and joint PHA analysis. Another commenter stated that it is the coordinating State agency for CPD formula HUD funding in the State and anticipates completing the AFH using the tool for States. The commenter stated that it is also a PHA and as a PHA it exceeds to the voucher limit noted in the rule for being a QPHA eligible for collaboration with the state. The commenter stated that in the event that the State would like to have its tool serve as a collaborative submission inclusive of itself as a PHA, it is not clear that this is possible. The definition of QHPA should be clarified to denote that states that are, themselves, PHAs are included as QPHAs regardless of voucher volume and are able to be collaboratively included in the state tool if the state desires in order to avoid a duplication of effort.

A commenter stated that HUD should incentivize collaboration by providing more resources and more time to complete a full assessment when collaborating with other entities. Another commenter stated that the most important issue here is the divergence of questions between the PHA Assessment Tool and the Local Government Assessment Tool. The commenter stated that if there is a proposed collaboration between a PHA or PHAs and a local jurisdiction, it should be made clear that the cumulative questions in both AFHs should be applied to the collaboration, so that key information is not omitted based on which entity is the "lead." The commenter stated that an easy way to accomplish this would be a new AFH collaborative tool that incorporates all of the questions and data in both the PHA and local jurisdiction tools. Another commenter stated that a new collaborative tool will be useful and suggests that HUD should make it clear that all questions from the PHA Assessment Tool and the Local Government Assessment Tool must be answered in a collaborative AFH, but also that each entity does not have to do a separate analysis when questions are duplicative.

HUD Response: HUD appreciates all of the commenters' suggestions regarding how to best facilitate QPHA collaboration. HUD is not able to direct certain types of program participants to collaborate on an AFH, as the regulation, at 24 CFR 5.156, makes clear that such collaboration is entirely voluntary. HUD also clarifies that the use of the Assessment Tool for PHAs is meant for use by PHAs conducting and submitting an AFH alone or with other PHAs, including QPHAs. The Assessment Tool for Local Governments is intended for use by local governments conducting and submitting an AFH alone, or with other local governments, or with PHAs, including QPHAs. Finally, the Assessment Tool for States and Insular Areas is intended for use by States or Insular Areas conducting and submitting an AFH alone, with local QPHAs partnering with the State, with local governments that received a CDGB grant of $500,000 or less in the most recent fiscal year prior to the due date for the joint or regional AFH in a collaboration with the State, or with HOME consortia whose members collectively received less than $500,000 in CDBG funds or received no CDBG funding that partners with the State. HUD will continue to explore ways to facilitate meaningful collaborations among all types of program participants. The questions in each of those Assessment Tools are specifically designed to include the required analysis for each type of program participant, should that type of collaboration occur. HUD has also committed to issuing an Assessment Tool for QPHAs that choose to conduct and submit an AFH individually, or as part of a collaobartion with other QPHAs.

At this time, HUD is not able to offer specific incentives to entities that choose to collaborate, but notes that doing so could provide for burden and cost reduction when completing an AFH. Additionally, collaboration could result in more robust goals to tackle the fair housing issues affecting the jurisdictions and regions of all program participants in the collaboration.

Specific Issues for Comment

1—Content of the Assessment Tool

1a. Does the structure of adding a specific focus on PHA programs better facilitate the fair housing analysis PHAs must conduct, or should these questions be combined with the "Other Publicly Supported Housing Programs" subsection, using the structure that was similar to the Local Government Assessment Tool?

Several commenters stated that the two new subsections in the tool would provide better data for accurately identifying fair housing need within the PHA's county. The commenters stated that PHAs have the knowledge within their agencies to provide data on program operations, development, and assisted residents within their jurisdiction. The commenters also stated that information would definitely benefit the overall fair housing analysis. The commenters also stated that the tool should be as detailed as possible because it will be the working template and ultimate document that PHAs, residents, and advocates will be working with on a frequent, operational basis. The commenters stated that the assessment tool, along with detailed guidance, providing direction echoing the final rule would minimize the need for stakeholders to toggle between the final rule, guidance, and the tool. A commenter agreed with these commenters and stated that many of the questions should also be included in the local government tool.

A commenter stated that the tool does a good job focusing on all aspects of housing in a community, taking into account issues of segregation, concentrated areas of poverty, opportunity areas, transportation, health, education, disability services, and more. The commenter stated that while some items do not apply to its location and other items could be added, the tool overall is successfully arranged and allows for the input of local information, recognizing that not every community is the same. The commenter stated that assessment completed well and completely will be a meaningful document that PHAs can use to AFFH in their communities.

Another commenter expressed agreement with HUD's decision to include separate subsections because these programs raise different fair housing issues. The commenter stated that a PHA has considerable discretion in public housing admissions while its role as administrator of the Section 8 program limits its ability to affect private owner's rentals. The commenter stated that, although a PHA may urge voucher holders to see housing in areas of opportunity, it cannot ordinarily compel a private owner to rent to a voucher holder, so it is important to assess both of these programs separately from a fair housing planning perspective. Other commenters stated that there is significant overlap in the questions asked in these sections and HUD should revaluate both and consider condensing into one. One of the commenters stated that HUD must not add questions to the tool but should instead remove questions that are irrelevant to PHA's authorities, jurisdictions, and capacities, and streamline the tool.

HUD Response: HUD appreciates these comments relating to whether the PHA's program should be analyzed separately from the other publicly supported housing programs included in the Assessment Tool. At this time, HUD has decided to keep these two subsections separate to best facilitate the analysis for PHAs with respect to their programs. Additionally, HUD notes that in order to set appropriate and meaningful fair housing goal, PHAs must assess issues over which they may not have control in order to fully understand what fair housing issues are present, what contributing factors are present, and how the PHA can best overcome them.

1b. Will conducting the new "Fair Housing Analysis of Rental Housing" for all PHAs result in a more robust analysis of fair housing in the PHA's service area and region, even for PHAs that only administer public housing? Should this section only apply to PHAs that administer HCVs?

Commenters stated that a small PHA that has only an HCV program will not benefit from the tool and will not ultimately provide better services/ opportunities for low-income families. A commenter stated that one of the most significant barriers to affirmatively furthering fair housing is the Fair Market Rent (FMR) system in which HUD's FMR is defined as the dollar amount below which 40 percent of the standard-quality rental housing units are rented in an area. The commenter stated that by definition, this limits the areas where HCV participants can move and confines them to areas where there may be fewer standard-quality rental housing. Another commenter stated that for PHAs operating public housing only their properties are where they are and were sited with HUD approval. The commenter stated that until federal resources become available for development or recapitalization of deeply affordable housing, a robust analysis will have no outcomes of interest. The commenter stated that PHAs may already have deep knowledge of the rental housing in their communities although a PHA may not meet HUD's data standards or formats. The commenter stated that HUD already has knowledge of Federally supported assisted housing properties. A commenter agrees since PHAs that only administer public housing have only fixed units so the utility of doing an analysis of the surrounding renal market is negligible.

Other commenters stated that to better define and provide accurate information for a Fair Housing Analysis of Rental Housing in a PHA's service area, there should be data collection for both public housing and HCV. The commenters stated that, in some cases, the PHA administers both programs with the HCV units outnumbering PH units, and that HCVs can be used anywhere within the jurisdiction of the county and by analyzing both programs, the data will show where is a need to increase fair housing opportunities. The commenters stated that requiring PHAs that only administer public housing to complete this is consistent with other sections of the AFH that may not directly relate to public housing specifically, doing so is informative to the rest of the analysis and may further inform identification of contributing factors, and asking these PHAs to answer five additional questions is not an undue burden. Another commenter stated that the request to "describe how rental housing, including affordable rental housing in the service area and region, has changed over time" in this section should be removed since the utility gained is marginal. The commenter stated that change in affordable rental housing over time is not nearly as important as the current status of the market and location of rental housing, and the time spent answering this question will be excessive.

HUD Response: HUD appreciates these comments related to the fair housing analysis of rental housing subsection. HUD has decided that the section will apply only to PHAs that administer Section 8 Housing Choice Vouchers. HUD will continue to consider comments and suggestions for improving this section of the analysis that was intended to be tailored specifically to inform PHA program operations.

1c. Has HUD identified the most relevant contributing factors for PHAs for purposes of conducting a fair housing assessment and setting fair housing goals and priorities?

Several commenters affirmed that HUD had identified the relevant contributing factors for PHAs. A commenter stated that it "firmly believes the new contributing factors added by HUD for the fair housing analysis are excellent." Another commenter stated that these are the main questions that need to be answered as to why housing options can be limited for voucher holders and the need to expand housing options to low-income people.

A commenter recommended adding the following contributing factors to ensure PHAs consider the same major barriers to opportunity for people with disabilities as for other protected classes: Community opposition; Location and type of affordable housing; Occupancy codes and restrictions; Private discrimination; Access to financial services; Access to federally qualified health clinics and other healthcare settings often used by low-income individuals; Availability, type, frequency and reliability of public transportation; Lack of state, regional or other intergovernmental cooperation; Admissions and occupancy policies and procedures including preferences in publicly supported housing; Impediments to mobility; Lack of private investment in specific areas within the State; Lack of public investment in specific areas within the State including services and amenities; Siting selection policies, practices and decisions for publicly supported housing; Source of income discrimination; Access to schools that are accessible to students and parents with disabilities and proficient in educating students with disabilities in integrated classrooms; Access to employment opportunities; Access to low poverty areas; Access to environmentally healthy areas within the PHA. Another commenter expressed concern that the contributing factor in Section 7 regarding access to proficient schools for persons with disabilities will be interpreted to refer to segregated schools for individuals with disabilities, and suggests it be revised to read: Access to schools that are accessible to students and parents with disabilities and proficient in educating students with disabilities in integrated classrooms. The commenter stated that for each set of CFs, add "local governments or the state unwilling to promote source of income legislation, or poor enforcement where source of income ordinances exist." The commenter further made the following recommendations: For the segregation and R/ECAP CFs, add: Impediments to mobility, impediments to portability, policies related to payment standards, FMR, and rent subsidies; for "Publicly Supported Housing" add: "past and present" to the site selection factor after asking for "policies, practices, and decisions," and "displacement of residents due to economic pressures, causing landlords to exit the HCV or Section 8 Programs." Another commenter stated that it believes the new contributing factors (such as restriction on landlords accepting vouchers, impediments to portability, policies related to payment standards, FMR, rent subsidies, etc.) in the Publicly Supported Housing section are appropriate because they are related to housing. The commenter stated that HUD should add "complexity of federal regulations" as a contributing factor since this one of the primary reasons that many landlords do not participate in the HCV program. The commenter stated that PHAs should be asked directly the extent to which they are contributing to segregation and concentration of poverty in the service area and region (in the initial CF section on page 3), even though PHAs are already required to do this to truthfully certify that they are eligible for federal funds. The commenter stated that HUD should require analysis of data and certain types of laws and policies that impact homeless and high need populations as part of the factors that contribute to segregation/integration, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs because these laws and policies that criminalize homelessness and zoning or other regulatory laws facilitate segregation. The commenter further recommended the following: "Access to public space for people experiencing homelessness" should be added as a contributing factor; HUD should create a factor that mirrors "regulatory barriers to providing housing and supportive services for persons with disabilities" to address laws that restrict or allow provision of services to persons experiencing homelessness; add "nuisance laws"; add "reliance on eviction history to make acceptance decisions."

A commenter stated that contributing factors should be modified so they are more closely tied to an analysis that is relevant for PHAs. The commenter stated that the reference to vouchers in the community opposition should be expanded to include opposition to proposed measures to prohibit source of income discrimination. The commenter stated that the description for "lack of regional cooperation" should reference any existing failure among PHAs within a region to cooperate in facilitating the portability of HCV holders who seek to relocate from the jurisdiction of one PHA to another, or the "impediments to mobility" and to "portability" should be included in the sections focusing on R/ECAPs, segregation, and disproportionate housing needs. The commenter further stated that the "location and type of affordable housing" description should reference the location of HCV households.

A commenter stated that impediments to portability should include reference to the fact that family members can be terminated from the voucher program upon moving to a new jurisdiction based on a member's criminal history record. The commenter recommended that HUD should add, "policies related to payment standards, FMR, and rent subsidies" for both segregation and R/ECAPs. The commenter stated that the description of this contributing factor should include reference to PHA policies and practices regarding rent reasonableness determinations in the context of the Voucher program. The commenter requested that the "restrictions on landlords accepting vouchers" contributing factors should be re-named "Barriers imposed upon Landlords who wish to rent to Voucher holders."

Another commenter expressed support for the addition of the three new contributing factors in disparities in access to opportunity. The commenter stated that low FMRs and payment standards in costly rental markets can prohibit mobility and portability so this should be reflected in the definitions of "impediments to portability and "policies related to payment standards, FMR, and rent subsidies." The commenter made the following recommendations: That HUD add to the disparities in access to opportunity contributing factors—source of income discrimination, lack of job training programs, and lack of affordable childcare; HUD add to the disproportionate housing needs contributing factors—involuntary displacement of survivors of domestic violence, source of income discrimination, high housing costs on the private market, and policies related to payment standards, FMR and rent subsidies; for the disabilities and access section, add "failure to provide reasonable accommodations as a new contributing factor with its own description instead of just referenced in the "private discrimination" factor; add the following possible contributing factors to the Publicly Supported Housing Analysis section: (1) Lack of meaningful language access; (2) Discrimination against LGBT individuals and families; (3) Lack of safe, affordable housing options for survivors of domestic violence; and (4) Displacement of residents due to economic pressures (existing contributing factor appearing in other analysis sections of the Draft PHA Tool). The commenter stated that the description for the contributing factor "Land Use and Zoning laws" lists inclusionary zoning alongside policies which can be used to limit housing choice which is confusing, so it should read "lack of inclusionary zoning practices" instead.

Several commenters stated that the contributing factors analysis should be removed from the tool. The commenters stated that it is not possible to answer these questions with statistical validity on the relationship between possible contributing factors and the impact on fair housing issues. They said that this will result in highly speculative and subjective answers. Another commenter suggested leaving this for local governments instead of PHAs. The commenter stated that PHAs have no influence on local zoning or planning policies. A commenter stated that unless the PHA works in collaboration with a municipal or state partner, analyzing these factors may be of limited utility. Another commenter stated that the tool should only suggest contributing factors that are housing-related because other ones are outside of the PHA's expertise.

HUD Response: HUD appreciates all of the commenters' recommendations relating to contributing factors. HUD has added several new contributing factors, "lack of public and private investment in specific neighborhoods" (previously two separate factors, and includes access to santition services, among others), "nuisance laws," "lack of meaningful language access," "lack of access to opportunity due to high housing costs" and "lack of job training programs"." HUD has also included certain contributing factors that were previously listed in other sections of the Assessment Tool in the Disability and Access section. HUD has added to some of the existing descriptions of contributing factors, including language related to homelessness, domestic violence, environmental health (*i.e.*, safe and clean drinking water) lack of source of income protections, and FMRs or other payment standards.

HUD again notes that in order to best understand the fair housing issues affecting the PHA's service area and region, PHAs must take a holistic approach in analyzing their fair housing landscape in order to set appropriate goals that will allow the PHA to take meaningful actions that affirmatively further fair housing. This approach includes the identification of contributing factors that are creating, contributing to, perpetuating, or increasing the severity of one or more fair housing issues in the PHA's service area and region. HUD acknowledges that PHAs may not be able to overcome all contributing factors due to their limited scope of operations and resources; however, PHAs must still have an understanding of those contributing factors in order to set goals for overcoming the related fair housing issues.

1d. Does the reordering of the sections, so that Disability and Access comes before the analysis of Publicly Supported Housing better facilitate the PHA's fair housing analysis?

A commenter stated that by reordering the sections so that Disability and Access comes before the analysis of Publicly Supported Housing, it will benefit HUD to show where this type of housing is needed and if the PHA's provide sufficient housing options for the disabled population, but another commenter expressed a firm no to this question.

Another commenter stated that HUD needs to add additional questions to the Disability and Access section of the Tool to facilitate the PHA's fair housing analysis. The commenter stated that HUD regulations at 24 CFR part 8 require programmatic access to HUD assisted housing and 24 CFR 8.25(c) requires PHAs to assess the need for accessible units. The commenter stated that HUD should add questions to ascertain that the PHA has met the specific requirements of these sections, including asking related to whether data provided by HUD indicates that people with disabilities have equal access to PHA programs, whether the PHA completed a needs assessment and transition plan, whether the PHA has a written accommodation policy, whether the PHA makes its application process accessible, whether the PHA encourages participation by owners, whether PHAs provide a list of accessible units to families receiving a voucher when a family member has disabilities, and whether the PHA requires applicants who do not require the accessibility features of a unit to sign an agreement to move to a non-accessible unit when available.

Other commenters stated that under the Integration of Persons with Disabilities Living in Institutions and Other Segregated Setting section, HUD should include the following: under Question 3c, "describe any pending or settled Olmstead-related law suits, settlements or Olmstead initiatives not involving litigation"; Question C(2) should include a question about PHA compliance with the requirement to provide effective communication to persons who experience disabilities, and the question should read, "How do PHA personnel and building staff engage in effective communication with applicants and residents who experience disabilities?" The commenter stated that the accompanying instructions should ask the PHA to answer this question using any available local data or local knowledge, and that Question C(2) should include a question about wait list times for accessible units that are administered by the PHA, which should read as follows: Is there a wait list for units accessible to people with different types of disabilities? If so, describe the average wait times for each type of accessible unit." The commenter stated that the accompanying instructions should ask the PHA to answer this question using any available local data or local knowledge.

HUD Response: HUD appreciates the recommendations of the commenters related to the Disability and Access section of the Assessment Tool. Currently, HUD has left the ordering of the sections unchanged, and the Disability and Access section will continue to precede the Publicly Supported Housing section of the analysis.

HUD has added two questions to the housing accessibility subsection of the Disability and Access section, which both relate to how PHAs and their staffs engage with persons with disabilities and how waiting list policies affect persons with disabilities, including preferences, program selection, placement determination, application method, length of time the application window is open, and the average wait list time.

2—Identifying PHA Service Areas

2a. HUD seeks comment on an efficient manner in which HUD could use to obtain information about each PHA's service area without causing unnecessary burden.

A commenter stated that as long as the information in the AFFH Data and Mapping Tool is kept up-to-date and is accurately tracked, the commenter believes it can provide the information without too much stress on the agency, though it cannot speak for other agencies. The commenter stated that a reduction of funding has caused stress on agencies and possible staff agencies could cause unnecessary burdens to smaller authorities. Other commenters stated that regional analysis should be optional for PHAs with large service areas operating in rural areas. One of the commenters stated that PHA operates in 29 counties, sometimes in non-contiguous areas, and that, in addition, through the Project Access Program which utilizes up to 140 of the commenter's HCVs to assist persons with disabilities who are exiting institutions or avoiding re-institutionalization, the PHA operates outside of those 29 jurisdiction areas because individuals assisted with this program can locate outside of those areas but are generally transferred to and absorbed ("ported") by the local PHA that does have jurisdiction for that area.

Another commenter sought guidance on how a PHA whose service area is most of the state should be analyzed—for the State as a whole or for jurisdictions in which it operates. A commenter stated that regional analyses are overly burdensome and irrelevant because PHAs do not exercise influence over these broad areas, and it is even more complex for agencies outside of a core based statistical area or CBSAs or regions that cross state borders. The commenter stated that the regional analysis should be removed.

A commenter stated that many PHAs operate in jurisdictions that are not equivalent to Metropolitan Statistical Areas (MSAs) and that are also not identical to city or county borders. The commenter stated that, instead, these service areas are defined by State statute and are based on a variety of factors in addition to political boundaries. The commenter stated that HUD should explicitly defer to PHAs' selection of the most relevant dataset for their needs if HUD cannot provide all of the necessary data. A commenter stated that HUD field offices should facilitate collection of this data.

Another commenter stated that for agencies chartered by States, service areas correspond to jurisdictions and the alternative terminology HUD uses may be confusing. A commenter stated that HUD has indicated that it will require a single submission for agencies describing their jurisdiction. The commenter stated that it is surprising that HUD lacks a record of jurisdictions since HUD has conducted business with HAs since 1937, and these institutions may own properties subsidized by HUD and execute ACCs.

A commenter stated that HUD should use its own records to establish agencies' jurisdictions and permit PHA's to submit any necessary corrections to those jurisdictions on an exception basis, since requiring all agencies to submit this information will require almost 2 person years of time to complete, even though HUD has estimated that this task will consume 1 hour of administrative time.

Commenters stated that HUD should add a section titled "Service Area" and ask PHAs to describe its service area using readily identifiable indicators such as geographic boundaries and the census tracts that roughly approximate the geographic boundaries. The commenters stated that PHAs should also briefly explain how State law determines the size and scope of PHA service areas with a citation to relevant legal authority under State law. The commenters stated that since there is no uniform means by which PHA service areas are determined, stakeholders who are assessing the adequacy of a PHA's AFH would benefit from an understanding of how a specific PHA's area is defined.

Other commenters stated that HUD should ask PHAs for this information directly, separate and apart from the AFH in a uniform format the permits GIS mapping. The commenters stated that the data received through the AFH should be entered into a national database. The commenters also stated that a "service area" definition should also be requested in the AFH.

HUD Response: HUD appreciates all of the feedback it received related to how HUD could obtain information about each PHA's service area. HUD notes that a regional analysis is required for a fair housing analysis, and therefore it cannot be made optional for PHAs. As noted above, HUD intends to provide data that PHAs will use to conduct their AFH. HUD acknowledges that PHAs' service areas are determined by State legislation and their scope may vary. HUD does not currently have data for all PHAs' service areas. In order to provide data to assist PHAs in conducting their AFH, HUD will need to obtain information about each PHA's service area in order to provide relevant data to the PHA.

HUD will provide an online geospatial tool, either in the existing AFFH Data and Mapping Tool (AFFHT) or in a related online web portal that will provide PHAs the ability to select from a variety of geographic units, the one unit or combination of units that most closely fits their service area. Geographic units include the most commonly used administrative geographic units mapped by the U.S. Census Bureau. These may include geographic entities such as census tracts, incorporated places or minor civil divisions (collectively known to HUD as units of general local government), entire counties, the balance of counties after incorporated entities have been removed, entire states, or the balance of states after incorporated local government jurisdictions have been removed. In many cases, PHA service areas will be the same as local governments that are already identified in the AFFHT, while in others PHAs would have the ability to identify their unique service area borders using the online tool. Specific solicitation of comment: HUD seeks comment on an efficient manner in which HUD could use to obtain information about each PHA's service area without causing unnecessary burden.

HUD intends to provide PHAs with additional guidance on how to analyze their service areas and regions, with respect to the scope of each at a later date. HUD is evaluating the feasibility of obtaining the geographic location of each PHA's service area from the PHA directly, but notes that if it were to do so, would undergo the proper procedures for information collection under the Paperwork Reduction Act. HUD understands that each PHA covers a different geography and that each State's law authorizes the PHAs' operations differently. HUD will take this into account when obtaining the services areas of PHAs.

3—PHA Wait Lists

3a. HUD seeks comment on how fair housing issues may affect families on a PHA's waiting list.

A commenter stated that most, if not all, housing authority developments exist in impacted areas so any waiting list applicant could be greatly impacted. Another commenter opposed the inclusion of data from families on the waiting list in completing the AFH since, as the commenter stated, this information has not been verified and is limited, which, according to the commenter makes it difficult to make assumptions about any relevant factors related to the AFH. The commenter stated that some data is available for individuals on the waiting list, but questioned the relevancy as those on the list may need to wait years and circumstances may change. The commenter stated that HUD should clarify the purpose it feels this serves. Another commenter stated that it does not believe that analyzing individuals on the waiting list will yield useful information in fair housing planning because the demand for affordable and federally assisted housing far exceeds the supply and families may be unable to move for reasons other than the PHAs action or inaction.

A commenter stated that certain types of tenant selection and waiting list management policies can have a discriminatory impact on persons in protected classes by making it more difficult for out of town families to gain admission or by creating barriers to people with disabilities.

HUD Response: HUD thanks the commenters for their feedback. HUD agrees that it is important to analyze waiting list policies in order to have a better understanding of their impact on fair housing. Therefore, HUD believes that an analysis of the PHA's policies, practices, and procedures related to its application and waiting list process is necessary so that the PHA can set appropriate goals to ensure that these practices promote fair housing choice for all.

3b. Do PHAs have relevant information related to these families? To what extent to PHAs have information to inform answers to the questions related to families on PHA waiting lists?

Commenters stated that applicants apply for housing based on their desire to live in a specific area for a number of reasons, and data collected from the waiting list may not give all the needed information to provide an accurate analysis for fair housing. A commenter stated that PHAs do not have historic waiting list data (data beyond the record retention period).

A commenter stated that PHAs have data on households on waiting lists that include household members, disability status, student status, race, and ethnicity. Another commenter stated that a PHA program operates with multiple waiting lists. Other commenters stated that PHAs do not treat waiting list data uniformly and have different amounts of information and may verify at different times.

HUD Response: HUD appreciates the information provided by these commenters and has taken it into consideration.

3c. Is HUD asking the appropriate questions with regard to this population or are there alternative considerations PHAs should be asked to consider as part of the analysis?

Commenters stated that to consider alternative considerations in analyzing fair housing, a question may be needed as to where the applicant wants to live and if there is sufficient housing options in this area. Another commenter stated that any analysis should note that the waiting list household data is self-reported and not verified by PHA staff. Other commenters stated that HUD should ask if the PHA requires in-person applications at the PHA office or if applications can be obtained by mail or online or at multiple locations. The commenters stated that HUD should ask the following questions: Are applications only accepted online? Does the PHA use a first-come first served waiting list, or a lottery to determine placement on the waiting list? Does the PHA keep the waiting list open for a long enough time to permit applicants from outside the service area to apply? Are there any local preferences for program admission, and if so, please list the preferences? Is there a local residency preference? How does the PHA make information available to people with limited English proficiency, and what accommodations it makes for people with disabilities?

HUD Response: HUD appreciates the feedback from these commenters. HUD notes that the contributing factor of ''admissions and occupancy policies and procedures, including preferences in publicly supported housing,'' includes many of the suggestions made by commenters above. HUD has also included a question relating to the waiting list with respect to persons with disabilities in the disability and access section of the Assessment Tool. In addition, HUD has removed references to waitlist analysis in the Disparities in Access to Opportunity Section.

V. Overview of Information Collection

Under the PRA, HUD is required to report the following:

Title of Proposal: Assesemnt Tool for Public Housing Agencies.

OMB Control Number, if applicable: N/A.

Description of the need for the information and proposed use: The purpose of HUD's Affirmatively Furthering Fair Housing (AFFH) final rule is to provide HUD program participants with a more effective approach to fair housing planning so that they are better able to meet their statutory duty to affirmatively further fair housing. In this regard, the final rule requires HUD program participants to conduct and submit an AFH. In the AFH, program participants must identify and evaluate fair housing issues, and factors significantly contributing to fair housing issues (contributing factors) in the program participant's jurisdiction and region.

The PHA Assessment Tool is the standardized document designed to aid PHA program participants in conducting the required assessment of fair housing issues and contributing factors and priority and goal setting. The assessment tool asks a series of questions that program participants must respond to in carrying out an assessment of fair housing issues and contributing factors, and setting meaningful fair housing goals and priorities to overcome them.

Agency form numbers, if applicable: Not applicable.

Members of affected public: PHAs of which there are approximately 3,942.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: HUD has made a number of revisions to its burden estimate based on both public feedback received during the 60-Day public comment period as well as a number of key changes made by HUD in response to public comment.

The public reporting burden for the PHA Assessment Tool is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table:

Type of respondent (lead entity or joint participant)	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated total burden (in hours)
PHA Assessment Tool:					
PHA as Lead Entity	814	1	814	240	195,360
PHA as Joint Participant	*400	1	400	120	48,000
Subtotal	**1,214				243,360

Type of respondent (lead entity or joint participant)	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated total burden (in hours)
PHA Service Area Information	3,942	1	Once per Assessment of Fair Housing cycle.	1	3,942
Total Burden					*** 247,302

* The estimate of 400 PHAs opting to submit AFHs acting as joint participants with other PHAs using this PHA Assessment Tool, includes an estimated 300 QPHAs and 100 Non-QPHAs. The estimate of 300 QPHAs is based on the new addition of a streamlined QPHA "insert" that is intended to facilitate collaboration by these small agencies. The estimate of 100 Non-QPHAs in this category is based on the likelihood of such collaborations occurring primarily in larger metropolitan areas. The latter estimate does not significantly change the overall total estimate burden.

** The total estimate of 1,214 PHAs that are assumed to use the PHA Assessment Tool is a modest decrease from the estimate of 1,314 agencies included in the 60-Day PRA Notice estimate. This change is explained in greater detail below.

*** The total estimate of 247,302 burden hours is a decrease from the estimate of 319,302 burden hours that was included in the 60-Day PRA Notice that was published on March 23, 2016. The decrease in the estimate is solely attributable to a change in the estimated number of PHAs that will use this assessment tool as lead entities with individual submissions, rather than due to any revision in the estimated amount of time to complete an AFH using the assessment tool. The reasons for the change in the estimated number of PHAs that are assumed to use the PHA Assessment Tool is described in further detail below.

Explanation of Revision in PHA Participation Estimates

HUD is including the following information in the 30-Day PRA Notices for all three of the assessment tools that are currently undergoing public notice and comment. The information is intended to facilitate public review of HUD's burden estimates. HUD is revising its burden estimates for PHAs, including how many agencies will join with other entities (*i.e.* with State agencies, local governments, or with other PHAs), from the initial estimates included in the 60-Day PRA Notices for the three assessment tools. These revisions are based on several key changes and considerations:

(1) HUD has added new option for QPHAs, to match the approach already presented in the State Assessment Tool as issued for the 60-Day PRA Notice, to facilitate joint partnerships with Local Governments or other PHAs using a streamlined "insert" assessment. Using this option, it is expected that the analysis of the QPHA's region would be met by the overall AFH submission, provided the QPHA's service area is within the jurisdictional and regional scope of the local government's Assessment of Fair Housing, with the QPHA responsible for answering the specific questions for its own programs and service area included in the insert.

(2) HUD's commitment to issuing a separate assessment tool specifically for QPHAs that will be issued using a separate public notice and comment Paperwork Reduction Act process. This QPHA assessment tool would be available as an option for these agencies to submit an AFH rather than using one of the other assessment tools. HUD assumes that many QPHAs would take advantage of this option, particularly those QPHAs that may not be able to enter into a joint or regional collaboration with another partner. HUD is committing to working with QPHAs in the implementation of the AFFH Rule. This additional assessment tool to be developed by HUD with public input will be for use by QPHAs opting to submit an AFH on their own or with other QPHAs in a joint collaboration.

(3) Public feedback received on all three assessment tools combined with refinements to the HUD burden estimate. Based on these considerations, HUD has refined the estimate of PHAs that would be likely to enter into joint collaborations with potential lead entities. In general, PHAs are estimated to be most likely to partner with a local government, next most likely to join with another PHA and least likely to join with a State agency. While all PHAs, regardless of size or location are able and encouraged to join with State agencies, for purposes of estimating burden hours, the PHAs that are assumed to be most likely to partner with States are QPHAs that are located outside of CBSAs. Under these assumptions, approximately one-third of QPHAs are estimated to use the QHPA template that will be developed by HUD specifically for their use (as lead entities and/or as joint participants), and approximately two-thirds are estimated to enter into joint partnerships using one of the QPHA streamlined assessment "inserts" available under the three existing tools. These estimates are outlined in the following table:

	QPHA outside CBSA	QPHA inside CBSA	PHA (non-Q)	Total
PHA Assessment Tool:				
(PHA acting as lead entity)			814	814
Joint partner using PHA template		300	100	400
Local Government Assessment Tool (# of PHA joint collaborations)		900	200	1,100
State Assessment Tool (# of PHA joint collaborations)	665			665
Subtotal	665	1,200	1,114	2,979
QPHA template	358	605		963
Total	* 1,023	* 1,805		** 3,942

* These totals (1,023 and 1,805 QPHAs) are the total number of QPHAs that are located inside and outside of CBSAs.

** The total of 3,942 represents all PHAs, not the sum of QPHAs (*i.e.* this is the total for this vertical column, not the horizontal row across).

Solicitation of Comment Required by the PRA

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) Are there other ways in which HUD can further tailor this Assessment Tool for use by PHAs? If so, please provide specific recommendations for how particular questions may be reworded while still conducting a meaningful fair housing analysis, or questions that are not relevant for conducting a meaningful fair housing analysis, or other specific suggestions that will reduce burden for PHAs while still facilitating the required fair housing analysis.

(6) Whether HUD should include any other contributing factors or amend any of the descriptions of the contributing factors to more accurately assess fair housing issues affecting PHAs' service areas and regions. If so, please provide any other factors that should be included or any additional language for the contributing factor description for which changes are recommended.

(7) Whether the inclusion of the "insert" for Qualified PHAs (QPHAs) will facilitate collaboration QPHAs and non-qualified PHAs, and whether these entities anticipate collaborating to conduct and submit a joint AFH. Please note any changes to these inserts that (a) would better facilitate collaboration; (b) provide for a more robust and meaningful fair housing analysis; and (c) encourage collaboration among these program participants that do not anticipate collaborating at this time.

(8) Whether HUD's change to the structure and content of the questions in the Disparities in Access to Opportunity section with respect to the protected class groups that PHAs must analyze is sufficiently clear and will yield a meaningful fair housing analysis. Additionally, HUD specifically solicits comment on whether an appropriate fair housing analysis can and will be conducted if the other protected class groups are assessed only in the "Additional Information" question at the end of the section, as opposed to in each subsection and question in the larger Disparities in Access to Opportunity section. HUD also requests comment on whether it would be most efficient for PHAs to have the protected class groups specified in each question in this section. If so, please provide an explanation. Alternatively, HUD requests comment on whether each subsection within the Disparities in Access to Opportunity section should include an additional question related to disparities in access to the particular opportunity assessed based on all of the protected classes under the Fair Housing Act.

(9) What sources of local data or local knowledge do PHAs anticipate using with respect to their analysis? Please specify which sections of the Assessment Tool PHAs anticipate using local data and local knowledge. For example, what sources of local data or local knowledge, including information obtained through the community participation process and any consultation with other relevant governmental agencies, do PHAs anticipate using for the service area as compared to the region regarding disparities in access to opportunity? Are there any different sources of local data or local knowledge for the question on disparities in access to opportunity in the publicly supported housing section?

(10) Whether the instructions to the Assessment Tool provide sufficient detail to assist PHAs in responding to the questions in the Assessment Tool. If not, please provide specific recommendations of areas that would benefit from further clarity.

(11) How can HUD best facilitate the anlaysis PHAs must conduct with repsect to disparities in access to opportunity? For example, are questions based on the overall service area and region of the various opportunity indicators the best way for PHAs to identify access to opportunity with respect to their residents, including voucher holders? With regards to disparities in access to opportunity, how might the PHA identify contributing factors and set goals for overcoming disparities in access to opportunity?

(12) What additional guidance would be useful to PHAs to assist in conducting the fair housing analysis in the Assessment Tool? In particular, which fair housing issues and contributing factors would benefit from additional guidance? For example, in the disparities in access to opportunity section, what guidance would PHAs benefit from?

(13) In the publicly supported housing section, there are several questions related to assisted housing programs that are not owned or operated by the PHA. Are these questions sufficiently clear, or would additional instructions beyond those that are provided be helpful to PHAs in answering these questions? Are there other or different questions that would facilitate the PHAs' analyses of publicly supported housing, specifically for the other categories of publicly supported housing included in this Assessment Tool?

(14) There have been new questions added to the Disability and Access Analysis section, under "Housing Accessibility" (Questions 2(d) and 2(e)). Are these questions sufficiently clear, or would additional instructions beyond those that are provided be helpful to PHAs in answering these questions? Are there other or different questions that would facilitate the PHAs' analyses of disability, specifically related to housing accessibility?

(15) Are there other ways HUD can clarify the questions in the Assessment Tool, for example, through the provision of additional instructions, or different instrcutinos from those that have been provided? Additionally, are there other or different questions or instructions that would better assist State PHAs in conducting their fair housing analysis? Please specify whether a particular section, question, or set of instructions requires clarification. HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by October 20, 2016 to *www.regulations.gov* as provided under the **ADDRESSES** section of this notice. Comments must refer to the proposal by name and docket number (FR–5173–N–09–A). HUD encourages interested parties to submit comment in response to these questions.

Dated: September 14, 2016.

Inez C. Downs,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–22594 Filed 9–19–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5910–N–14]

60-Day Notice of Proposed Information Collection: Implementation Phase Review of the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Youth Homelessness Prevention Initiative

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described here. In accordance with the Paperwork Reduction Act (PRA), HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 21, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Matthew Aronson, Program Specialist, SNAPS/CPD, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Matthew.K.Aronson@hud.gov* or telephone (202) 402–3554. (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Mr. Aronson.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Implementation Phase Review of the LGBTQ Youth Homelessness Prevention Initiative.

OMB Approval Number: N/A.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: The LGBTQ Youth Homelessness Prevention Initiative began in the summer of 2013 as part of a federal interagency initiative. The initiative's goal is to prevent homelessness among lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, and to intervene early when homelessness occurs for these youth. Federal partners from the U.S. Departments of Education, Health, and Juvenile Justice, as well as the U.S. Interagency Council on Homelessness, support this HUD initiative. The initiative supports the federal goal to end youth homelessness by 2020 and contributes to the development of a model for preventing LGBT youth homelessness that other communities can replicate. There are two communities participating in this initiative and both receive technical assistance (TA) to support their initiative planning (and later in the process, their initiative implementation).

This request for OMB clearance covers the implementation phase which will document the approach and experiences of both communities as they have implemented their local plans. Furthermore, this review will examine the resources required to carry out implementation, what worked well, what challenges emerged and how they were addressed, lessons learned, and recommendations both sites offer for potential replication. To produce this information, HUD will collect quantitative and qualitative data from primary sources using four methods: Interviews, surveys, focus groups, and document review. Participants will consist of the local initiative leads as well as individuals involved in local initiative steering committees and subcommittees and community members associated with the initiative.

Respondents (i.e. affected public): Organizations participating in the two local initiatives, including local lead organization, and participants on the local steering committees and subcommittees, and community members.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Implementation Phase Interview: Local leads, steering committee members, and subcommittee members, community members (n=96)	13	1	1	1	13	$25.46	$331
Implementation Phase Focus Group: Local leads, steering committee members, and subcommittee members, community members (n=96)	24	1	1	1	24	25.46	611
Implementation Phase Survey: Local leads, steering committee members, and subcommittee members, community members (n=96)	110	1	1	.25	27.5	25.46	700

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	110	1	1	.25–1	64.5	25.46	1,642

*$25.46 is a GS–11 equivalent hourly cost. Hourly cost per response will vary at participating nonprofit and local government offices.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 9, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2016–22580 Filed 9–19–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FW–HQ–BHC–2016–N158; FXMB12330900000–156–FF09M10000]

Proposed Information Collection; Electronic Duck Stamp Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 21, 2016.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *tina_campbell@fws.gov* (email). Please include "1018–0135" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Tina Campbell at *tina_campbell@fws.gov* (email) or 703–358–2676 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

On March 16, 1934, President Roosevelt signed the Migratory Bird Hunting Stamp Act (16 U.S.C. 718a *et seq.*) requiring all migratory waterfowl hunters 16 years of age or older to buy a Federal migratory bird hunting and conservation stamp (Federal Duck Stamp) annually. The stamps are a vital tool for wetland conservation. Ninety-eight cents out of every dollar generated by the sale of Federal Duck Stamps goes directly to purchase or lease wetland habitat for protection in the National Wildlife Refuge System. The Federal Duck Stamp is one of the most successful conservation programs ever initiated and is a highly effective way to conserve America's natural resources. Besides serving as a hunting license and a conservation tool, a current year's Federal Duck Stamp also serves as an entrance pass for national wildlife refuges where admission is charged. Duck Stamps and products that bear stamp images are also popular collector items.

The Electronic Duck Stamp Act of 2005 (Pub. L. 109–266) required the Secretary of the Interior to conduct a 3-year pilot program under which States could issue electronic Federal Duck Stamps. The electronic stamp is valid for 45 days from the date of purchase and can be used immediately while customers wait to receive the actual stamp in the mail. After 45 days, customers must carry the actual Federal Duck Stamp while hunting or to gain free access to national wildlife refuges. Eight States participated in the pilot. At the end of the pilot, we provided a report to Congress outlining the successes of the program. The program improved public participation by increasing the ability of the public to obtain required Federal Duck Stamps.

Under the authority provided by the Permanent Electronic Duck Stamp Act of 2013 (H.R. 1206), we continue the Electronic Duck Stamp Program in the 19 States that participate currently. We plan to expand the program by inviting all State fish and wildlife agencies to participate. Anyone, regardless of State residence, may purchase an electronic Duck Stamp through any State that participates in the program. Interested States must submit an application (FWS Form 3–2341). We will use the information provided in the application to determine a State's eligibility to participate in the program. Information includes, but is not limited to:

- Current systems the State uses to sell hunting, fishing, and other associated licenses and products.
- Applicable State laws, regulations, or policies that authorize the use of electronic systems to issue licenses.
- Example and explanation of the codes the State proposes to use to create and endorse the unique identifier for the individual to whom each stamp is issued.
- Mockup copy of the printed version of the State's proposed electronic stamp, including a description of the format and identifying features of the licensee to be specified on the stamp.
- Description of any fee the State will charge for issuance of an electronic stamp.
- Description of the process the State will use to account for and transfer the amounts collected by the State that are required to be transferred under the program.
- Manner by which the State will transmit electronic stamp customer data.

Each State approved to participate in the program must provide the following information on a weekly basis:

- First name, last name, and complete mailing address of each individual that purchases an electronic stamp from the State.

- Face value amount of each electronic stamp sold by the State.
- Amount of the Federal portion of any fee required by the agreement for each stamp sold.

II. Data

OMB Control Number: 1018–0135.

Title: Electronic Duck Stamp Program.

Service Form Number: 3–2341.

Type of Request: Extension of a previously approved collection.

Description of Respondents: State fish and wildlife agencies and individuals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for application; weekly for fulfillment reports.

Activity	Number of responses	Completion time per response (hours)	Total annual burden hours
Application	10	40	400
Fulfillment Report	1,508	1	1,508
Totals	1,518		1,908

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 14, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–22544 Filed 9–19–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N149; FXES11130200000–167–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973 (Act), as amended, prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before October 20, 2016.

ADDRESSES: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at Division of Classification and Recovery, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementing section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.,* Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–00482C

Applicant: William J. Dillsaver, Edmond, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for gray bats (*Myotis grisescens*) in Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

Permit TE–00480C

Applicant: Christopher J. Seiden, Oklahoma City, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for gray bats (*Myotis grisescens*) in Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

Permit TE–00479C

Applicant: Kevin L. Johnson, Oklahoma City, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for gray bats (*Myotis grisescens*) in Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

Permit TE–00540C

Applicant: Karen McBee, Stillwater, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for gray bats (*Myotis grisescens*) in Oklahoma.

Permit TE–02164C

Applicant: University of Arizona, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct surveys for spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*), and Gila chub (*Gila intermedia*) within Arizona.

Permit TE–02234C

Applicant: University of Arizona, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct surveys for Gila chub (*Gila intermedia*) and Gila topminnow (*Poeciliopsis occidentalis*) within Arizona.

Permit TE–009926

Applicant: Gulf South Research Corporation, Baton Rouge, Louisiana.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for Sierra Nevada yellow-legged frogs (*Rana sierrae*) within California.

Permit TE–63202B

Applicant: Carol Chambers, Flagstaff, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct activities for New Mexico meadow jumping mice (*Zapus hudsonius luteus*) within Arizona, New Mexico, and Colorado.

Permit TE–02962C

Applicant: Erika M. Capps, Oologah, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for American burying beetles (*Nicrophorus americanus*) within Oklahoma.

Permit TE–02952C

Applicant: Westward Environmental, Inc., Boerne, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warblers (*Dendroica chrysoparia*) within Texas.

Permit TE–83692A

Applicant: Sphere 3 Environmental, Inc., Longview, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for red-cockaded woodpeckers (*Picoides borealis*) within Texas.

Permit TE–19661B

Applicant: Tetra Tech, Inc., Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) within Arizona, New Mexico, Texas, and Colorado; for northern aplomado falcons (*Falco femoralis septentrionalis*) within Texas; and for Jemez Mountains salamanders (*Plethodon neomexicanus*) within New Mexico.

Permit TE–04861C

Applicant: Portage, Inc., Idaho Falls, Idaho.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Arizona and New Mexico:

- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- desert pupfish (*Cyprinodon macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- loach minnow (*Tiaroga cobitis*)
- razorback sucker (*Xyrauchen texanus*)
- spikedace (*Meda fulgida*)
- lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)

Permit TE–70795A

Applicant: Bowers Environmental Consulting, LLC, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Arizona, New Mexico, and Texas:

- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Arizona hedgehog cactus (*Echinocereus triglochidiatus var. arizonicus*)
- Huachuca water-umbel (*Lilaeopsis schaffneriana var. recurva*)
- Kearney's blue-star (*Amsonia kearneyana*)
- Nichol's Turk's head cactus (*Echinocactus horizonthalonius var. nicholii*)
- Pima pineapple cactus (*Coryphantha scheeri var. robustispina*)
- razorback sucker (*Xyrauchen texanus*)
- bonytail chub (*Gila elegans*)

Permit TE–52420A

Applicant: Pima County, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and salvage for the following species within Arizona:

- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)

Permit TE–041875

Applicant: John L. Koprowski, Tucson, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to capture and tag Sonoran tiger salamanders (*Ambystoma tigrinum stebbinsi*) within Arizona.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: September 6, 2016.

Joy Nicholopolous,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–22566 Filed 9–19–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

[Docket No. ONRR–2012–0003; DS63602000 DR2000000.PX8000 167D0102R2]

Public Outreach Regarding Oil, Gas and Coal Data for Montana and Louisiana

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice announces public outreach sessions/webinars regarding data that is available online about oil, gas, coal, and other mineral production and revenue in the states of Montana and Louisiana. The data is available through a data portal established by the U.S. Extractive Industries Transparency Initiative (USEITI) specifically to increase transparency of this information. The data portal is available at *https://useiti.doi.gov/.*

DATES: The public outreach sessions/webinars dates are:

Session 1—Helena, Montana, October 5, 2016
Session 2—Browning, Montana, October 6, 2016
Session 3—Shreveport, Louisiana, October 19, 2016

ADDRESSES: Session 1 will be held at the Montana State Capitol, 1306 E 6th Avenue, Room 172, Helena, Montana 59601, from 2:00–5:00 p.m. local time; Session 2 will be held at the Blackfeet Agency Bureau of Indian Affairs, (Bureau of Indian Affairs, 531 SE Boundary Street, Browning, MT 59417), 5:00–7:00 p.m. local time; and Session 3 will be at the Shreveport Convention Center, Red River Board Room, 400 Caddo Street, Shreveport, Louisiana 71101, from 6:00–8:00 p.m. local time. Members of the public may attend in person or view documents and presentations under discussion via Live Meeting Net Conference at *https://www.mymeetings.com/nc/join/.* If joining via Live Meeting Net Conference: Enter conference number PWXW9795965 and audience passcode 7741096, and listen to the proceedings at telephone number 1–888–455–2910 and international toll number 210–839–8953 (passcode: 7741096).

FOR FURTHER INFORMATION CONTACT: Judith Wilson, USEITI Secretariat; 1849 C Street NW., MS 4211, Washington, DC 20240. You may also contact the USEITI Secretariat via email at *useiti@ios.doi.gov,* by phone at 202–208–0272 or by fax at 202–513–0682.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior established the USEITI Advisory Committee (Committee) on July 26, 2012, to oversee the domestic implementation of this voluntary, global initiative designed to increase transparency and accountability in the governance of extractive industries revenue management. More information about the Committee, including its charter, and public meetings can be found at *www.doi.gov/eiti/faca.*

The public outreach sessions/webinars will provide the public awareness of EITI and its benefits, and demonstrate the interactive on-line annual USEITI Report. The USEITI Report can be found at *https://useiti.doi.gov/.* This session will also provide an opportunity for public comment on the Annual USEITI Report.

Background: In September 2011, President Barack Obama announced the United States' commitment to participate in the Extractive Industries Transparency Initiative. Implementing EITI is a signature initiative of the U.S. National Action Plans for an Open Government Partnership. EITI offers a voluntary framework for companies and governments to publicly disclose in parallel the revenues paid and received for extraction of oil, gas, and minerals. The design of each framework is country-specific and is developed through a multi-year, consensus-based process by a multi-stakeholder group comprised of government, industry, and civil society representatives. President Obama named the Secretary of the Interior the U.S. Senior Official responsible for implementing USEITI. The U.S. achieved Candidate Country status on March 14, 2014. USEITI published its First Annual Report on December 16, 2015. For further information on EITI, please visit the USEITI Web page at *http://www.doi.gov/EITI.*

Dated: September 9, 2016.

Gregory Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–22632 Filed 9–19–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP0000 L91410000.XP0000 16X]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, Bureau of Land Management's (BLM) Pecos District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on Thursday, October 20, 2016, at BLM Carlsbad Field Office, 620 East Greene Street, Carlsbad, New Mexico, from 9:00 a.m.–3:10 p.m. The public may send written comments to the RAC at the BLM Pecos District Office, 2909 West Second Street, Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Glen Garnand, Pecos District Office, Bureau of Land Management, 2909 West Second Street, Roswell, New Mexico 88201, 575–627–0209. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Pecos District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Pecos District.

Planned agenda items include: A presentation regarding the Draft

Carlsbad Resource Management Plan/ Environmental Impact Statement and a proposed fee structure at the Fort Stanton—Snowy River National Conservation Area; a discussion of BLM workload changes due to drop in oil prices; an update on the Planning 2.0 proposed rule; a presentation of BLM's proposed venting and flaring rule; the Seeds of Success intern program; the AFMSS II roll out; and the Rio Bonito proposed project.

All RAC meetings are open to the public. There will be a half-hour public comment period at 9:10 a.m. for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

Sally R. Butts,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2016–22509 Filed 9–19–16; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000 L10600000.PC0000]

Renewal of Approved Information Collection; OMB Control No. 1004–0042

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information from those who wish to adopt and obtain title to wild horses and burros. The Office of Management and Budget (OMB) has assigned control number 1004–0042 to this information collection.

DATES: Please submit comments on the proposed information collection by November 21, 2016.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240. *Fax:* to Jean Sonneman at 202–245–0050. *Electronic mail: Jean_Sonneman@blm.gov.* Please indicate "Attn: 1004–0042" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Holle Hooks at 405–234–5932. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Ms. Hooks.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

Title: Protection, Management, and Control of Wild Horses and Burros (43 CFR part 4700).

OMB Control Number: 1004–0042.

Summary: This notice pertains to the collection of information that enables the BLM to administer its private maintenance (*i.e.*, adoption) program for wild horses and burros. The BLM uses the information to determine if applicants are qualified to provide humane care and proper treatment to wild horses and burros in compliance with the Wild Free-Roaming Horses and Burros Act (16 U.S.C. 1331–1340).

Frequency of Collection: On occasion.

Forms: Form 4710–10, Application for Adoption of Wild Horse(s) or Burro(s).

Description of Respondents: Those who wish to adopt and obtain title to wild horses and burros.

Estimated Annual Responses: 7,093.

Estimated Annual Burden Hours: 3,545.

Estimated Annual Non-Hour Costs: $1,860.

The estimated burdens are itemized in the following table:

A. Type of response	B. Number of responses	C. Minutes per response	D. Total hours (Column B × Column C)
Application for Adoption of Wild Horse(s) or Burro(s) 43 CFR 4750.3–1 and 4750.3–2 Form 4710–10	7,000	30	3,500
Supporting Information and Certification for Private Maintenance of More Than Four Wild Horses or Burros 43 CFR 4750.3–3	6	10	1
Request to Terminate Private Maintenance and Care Agreement 43 CFR 4750.4–3	75	30	38
Request for Replacement Animals or Refund 43 CFR 4750.4–4	12	30	6
Totals	7,093		3,545

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2016–22612 Filed 9–19–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21887; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Thomas Gilcrease Institute of American History and Art (Gilcrease Museum), Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Gilcrease Institute of American History and Art (Gilcrease Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Gilcrease Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Gilcrease Museum at the address in this notice by October 20, 2016.

ADDRESSES: Laura Bryant, Anthropology Collections Manager, Thomas Gilcrease Institute of American History and Art, 1400 N. Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Gilcrease Museum, Tulsa, OK. The human remains and associated funerary objects were removed from Limestone and Morgan Counties, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Gilcrease Museum professional staff in consultation with representatives of the Cherokee Nation; the Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1954, human remains representing, at minimum, one individual were removed from likely one of these sites: 1LI27, 1LI49, 1LI52, or 1LI53 (Soday site number 399) in Limestone County, AL. The exact location is unclear. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent an adult, aged 36–55. No known individuals were identified. The 85 associated funerary objects are 1 scraper, 8 pottery sherds, and 76 flint and stone tools.

In 1951, human remains representing, at minimum, one individual were removed from Skeleton Island (Soday site number 401) in Limestone County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent one adult, aged 36–55. No known individuals were identified. The 430 associated funerary objects are 3 axes, 115 points, 8 sherds, 58 stone tools, 3 bone tools, and 243 unworked-stones.

In 1953, human remains representing, at minimum, 16 individuals were removed from Harbor Island West (Soday site number 417) in Limestone County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent one juvenile male, aged 13–19; one female young adult and one infant in the same burial; four adults; three children; and six individuals of unknown age and sex. No known individuals were identified. The 140 associated funerary objects are 72 sherds, 12 shell pieces, 44 stone tools, 3 partial ceramic pots, 1 ceramic trowel, 1 bone piece, and 7 flint cobbles.

In 1953, human remains representing, at minimum, four individuals were removed from Center Island East (Soday site number 423) in Limestone County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent three females, aged 20–35, and one male, aged 36–55. No known individuals were identified. The 587 associated funerary objects are 28 shells, 77 sherds, 476 stone tools and points, 1 stone palette, 1 round disk, and 4 faunal bone tools.

In 1955, human remains representing, at minimum, one individual were removed from Soday, East Middle Quad/TVA (Soday site number 428) in Limestone County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent one adult male, aged 36–55. No known individuals were identified. The 3,806 associated funerary objects are 1,325 stone tools, 14 sherds, 831 worked stone objects, 145 flakes, 561 points, 1 stone disc, 1 broken drill, 201 scrapers, 101 knives, 625 stone objects, and 1 hammerstone.

In 1952–1958, human remains representing, at minimum, one individual were removed from Strap Handle Island, Wheeler Lake (Soday site number 489) in Limestone County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The age and sex of the individual is unknown. No known individuals were identified. The 754 associated funerary objects are 4 discs, 86 sherds, 1 faunal bone, 1 cup, 1 bone awl, 6 knives, 5 discoidals, 233 stone tools, 371 points, 3 shells, 6 celts, 8 flakes, 6 stone bowls, 19 scrapers, 1 drill piece, 1 white cobble, 1 sandstone piece, and 1 broken gorget.

On an unknown date, human remains representing, at minimum, one individual were removed from Bald Knob Cemetery/Folsom Graveyard (Soday site number 456) in Morgan County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent one female adult, aged 36–55. No known individuals were identified. The 10 associated funerary objects are 2 scrapers, 3 points, and 5 stone objects.

In 1952, human remains representing, at minimum, two individuals were removed from West Middle Quad, Decatur (Soday site number 435) in Morgan County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent two females, aged 20–35. No known individuals were identified. The 1,245 associated funerary objects are 777 stone objects, 454 points, 13 flakes, and 1 pestle.

In 1957, human remains representing, at minimum, three individuals were removed from Chemstrand Island #1, Decatur (Soday site number 476) in Morgan County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. No known individuals were identified. The 432 associated funerary objects are 95 stone tools and points, 54 sherds, and 283 pieces of shell.

On an unknown date, human remains representing, at minimum, one individual were removed from Chemstrand, Harbor Island, Decatur (Soday site number 504) in Morgan County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent an adult, aged 36–55. No known individuals were identified. The 440 associated funerary objects are 4 points, 1 flake, 395 sherds, 1 quartz, 1 marble, 2 turtle shells, 12 daub structure fragments, 5 pottery supports, and 19 stone objects.

In 1957, human remains representing, at minimum, five individuals were removed from Prater Field Mounds (Soday site number 570) in Morgan County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. The human remains represent one young adult, aged 20–35; one middle-adult of unknown sex; two males, aged 36–55; and one individual of unknown age or sex. No known individuals were identified. The 13 associated funerary objects are 1 hoe, 1 boatstone, and 11 points and tools.

On an unknown date, human remains representing, at minimum, one individual were removed from Elkmont Side Notch, Decatur (Soday site number 607) in Morgan County, AL. The human remains were removed by Frank J. Soday, a collector and amateur archeologist. In 1982, the Thomas Gilcrease Museum Association purchased the Soday Collection, including these human remains, and subsequently donated the collection to the Gilcrease Museum. No known individuals were identified. The 71 associated funerary objects are 71 points and flakes.

Determinations Made by the Gilcrease Museum

Officials of the Gilcrease Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the burial context and location.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 37 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 8,013 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; the Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; the Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Cherokee Nation; the Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Laura Bryant, Gilcrease Museum, 1400 N. Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu*, by October 20, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation; the Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Gilcrease Museum is responsible for notifying the Cherokee Nation; the Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in

Oklahoma that this notice has been published.

Dated: September 6, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–22618 Filed 9–19–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21897; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the San Diego Museum of Man. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Diego Museum of Man at the address in this notice by October 20, 2016.

ADDRESSES: Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 ext. 17, email *bgarcia@museumofman.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the San Diego Museum of Man, San Diego, CA. The human remains and associated funerary objects were removed from Long Island, Kodiak Island Borough, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the San Diego Museum of Man professional staff in consultation with representatives of the Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak) and the Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island)).

History and Description of the Remains

In the summer of 1968, human remains representing, at minimum, one individual were removed from Long Island, Kodiak Island Borough, AK. These remains were removed from a midden by amateur anthropologists from the Long Island Historical Society. The individual is an adult male. These remains and associated funerary objects were donated to the San Diego Museum of Man by Steve and Linda Gassaway in 1984. No known individuals were identified. The 2 associated funerary objects are 1 slate hone and 1 lot of faunal remains.

An examination of the human remains by San Diego Museum of Man physical anthropology professional staff in 1990 determined the individual to be of prehistoric native Alaskan origin. Archeological data indicate that modern Alutiiqs evolved from societies of the Kodiak region, and can trace their ancestry back over 7,500 years in the region. The modern cultural affiliation of this prehistoric individual from Long Island is shared jointly between the Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak) and the Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island)).

Determinations Made by the {Museum or Federal Agency}

Officials of the San Diego Museum of Man have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak) and the Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island)).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and two associated funerary objects should submit a written request with information in support of the request to Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 ext. 17, email *bgarcia@museumofman.org,* by October 20, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak) and the Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island)) may proceed.

The San Diego Museum of Man is responsible for notifying the Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak) and Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island)) that this notice has been published.

Dated: September 7, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–22617 Filed 9–19–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–933; (Advisory Opinion)]

Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same, and Certain Products Containing Same; Notice of the Issuance of an Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue an advisory opinion in the above-captioned investigation. The Commission concurrently issues the advisory opinion and terminates the advisory opinion proceeding.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 10, 2014, based on a complaint filed by Valbruna Slater Stainless, Inc. of Fort Wayne, Indiana; Valbruna Stainless Inc., of Fort Wayne, Indiana; and Acciaierie Valbruna S.p.A. of Italy (collectively, "Valbruna"). 79 *FR* 61339 (Oct. 10, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain stainless steel products, certain processes for manufacturing or relating to same, and certain products containing same by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation named as respondents Viraj Profiles Limited of Mumbai, India ("Viraj"); Viraj Holdings P. Ltd. of Mumbai, India; Viraj—U.S.A., Inc. of Garden City, New York; Flanschenwerk Bebitz GmbH of Könnern, Germany; Bebitz Flanges Works Pvt. Ltd. of Maharashtra, India; Bebitz U.S.A. of Garden City, New York; and Ta Chen Stainless Pipe Co., Ltd. of Tainan, Taiwan and Ta Chen International, Inc. of Long Beach, California. *Id.* The Office of Unfair Import Investigations also was named as a party to the investigation. *Id.*

On December 8, 2015, the administrative law judge ("ALJ") (Judge Essex) issued an initial determination ("ID") (Order No. 17) finding Viraj in default for spoliation of evidence and ordering the disgorgement of complainants' operating practices in Viraj's possession. On February 8, 2016, the Commission determined to review Order No. 17, and, in its notice of review, determined to affirm the default finding against Viraj. 81 *FR* 7584 (Feb. 12, 2016). The Commission also requested briefing from the parties on certain other issues on review, and requested briefing from the parties, interested government agencies, and any other interested persons on the issues of remedy, the public interest, and bonding. *Id.*

On April 4, 2016, the Commission determined not to review an ID (Order No. 19) granting Valbruna's motion for partial termination of the investigation based on withdrawal of the complaint against all respondents except Viraj. Notice (Apr. 4, 2016).

On May 25, 2016, the Commission modified the reasoning underlying the default finding in Order No. 17 and vacated the ID's disgorgement order. The Commission terminated the investigation with a finding of violation of section 337 as to Viraj. The Commission also issued a limited exclusion order and a cease and desist order.

On June 22, 2016, Viraj filed a request for an advisory opinion pursuant to Commission Rule 210.79. On July 6, 2016, Valbruna opposed the request. On July 13, 2016, Viraj filed a motion for leave to file a reply to Valbruna's opposition. On July 21, 2016, Valbruna filed an opposition to Viraj's motion. The Commission grants Viraj's motion.

The Commission has determined that Viraj's request complies with the requirements for issuance of an advisory opinion under Commission Rule 210.79. Accordingly, the Commission has determined to issue an advisory opinion.

Having considered the parties' filings, the Commission has determined that Viraj has not provided sufficient information to determine whether any stainless steel products sought to be imported by Viraj would be covered by the limited exclusion order. The Commission's opinion on violation requires that Viraj establish "that *specific products* that it seeks to import are not manufactured using any of the trade secrets identified in Valbruna's complaint." Comm'n Op. at 31. Here, Viraj has not provided sufficient information to establish that specific stainless steel products would be manufactured without the benefit of Valbruna's trade secrets. The reasons for the Commission's determinations are set forth in the accompanying Advisory Opinion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 14, 2016.

Katherine Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–22545 Filed 9–19–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on August 19, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agrimetrics Ltd., Harpenden, UNITED KINGDOM; Linguamatics Ltd., Cambridge, UNITED KINGDOM; Daniel Taylor (individual member), Washington, DC; and Repositive, Cambridge, UNITED KINGDOM, have been added as parties to this venture.

Also, EPAM Systems, Cambridge, MA; DeltaSoft, Hillsborough, NJ; IO-Informatics, Berkeley, CA; Syapse, Palo Alto, CA; Eagle Genomics Ltd., Cambridge, UNITED KINGDOM; Ipsen Biomeasure Incorporated, Acton, MA; Omixon, Nyul, HUNGARY; Semtific, San Diego, CA; Titian Software, Westborough, MA; Advanced Chemistry Development, Inc. (ACD/Labs), Toronto, CANADA; Schrodinger, LLC, New York, NY; GeneStack Limited, Cambridge, UNITED KINGDOM; Molecular Connections, Bangalore, INDIA;

Connected Discovery Ltd., London, UNITED KINGDOM; Fulcrum Direct Ltd., Cardiff, UNITED KINGDOM; Intrepid Bioinformatics, Louisville, KY; Certara L.P. Portugal, Funchal, PORTUGAL; Mary Chitty (individual member), Needham, MA; BioIT, Edinburgh, UNITED KINGDOM; Cambridgene, Cambridge, UNITED KINGDOM; Jeeva Informatics Solutions, Derwood, MD; gritsystems A/S, Copenhagen, DENMARK; Genexyx srl, Trieste, ITALY; Savdion Ltd., Cambridge, UNITED KINGDOM; and FactBio, London, UNITED KINGDOM, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on May 31, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 2016 (81 FR 44048).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–22588 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on August 5, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), 3D PDF Consortium, Inc. (“3D PDF”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SpaceClaim, Concord, MA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on May 20, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2016 (81 FR 40351).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–22593 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on August 16, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Spectrum Consortium (“NSC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NextGen Federal Systems, LLC, Morgantown, WV; AX Enterprize, LLC, Yorkville, NY; Fregata Systems LLC, St. Louis, MO; University of Alabama, Tuscaloosa, AL; Quantum Dimension, Inc., Huntington Beach, CA; Colorado School of Mines, Golden, CO; Texas A&M Engineering Experiment Station, College Station, TX; Indiana Microelectronics, LLC, West Lafayette, IN; Covariant Solutions, LLC, Gaithersburg, MD; University at Buffalo, Buffalo, NY; Ziva Corporation, San Diego, CA; Unmanned Experts, Inc., Denver, CO; D–TA Systems Corporation, Centennial, CO; Cloud Front Group, Inc., Reston, VA; NuWaves Engineering, Middletown, OH; Systems & Processes Engineering Corp (SPEC), Austin, TX; Persistent Systems, LLC, New York, NY; EOIR Technologies, Inc., Fredericksburg, VA; SCAN LLC, St. Louis, MO; BridgeSat Inc., San Mateo, CA; nLight Solutions LLC, Charlotte, NC; RT Logic, Colorado Springs, CO; Hercules Research LLC, Chantilly, VA; Aspen Consulting Group, Manasquan, NJ; DataSoft Corporation, Tempe, AZ; New Mexico State University, Las Cruces, NM; Interoptek, Inc., North Charleston, SC; Intelligent Fusion Technology, Inc., Germantown, MD; Quasonix, Inc., West Chester, OH; NEBENS, LLC, Deer Park, IL; EWA Government Systems Inc., Herndon, VA; Guidestar Optical Systems, Inc., Longmont, CO; University of Michigan, Ann Arbor, MI; Harris Corporation RF Communications Division, Rochester, NY; HRL Laboratories, LLC, Malibu, CA; and Charles River Analytics, Inc., Cambridge, MA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on May 31, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 2016 (81 FR 44047).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–22595 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on August 16, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Armaments Consortium (“NAC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Design Consulting USA, Inc., Lansing, NY; CheyTac USA, Nashville, GA; CoorsTek, Inc., Golden, CO; CS Squared, LLC, Fairfax, VA; Digital to Definitive, LLC, Austin, TX; Florida Turbine Technologies, Inc., Jupiter, FL; GPS Source, Inc., Pueblo West, CO; II–VI Optical Systems, Inc., Murrieta, CA; Karagozian and Case, Inc., Glendale, CA; MILSPRAY, LLC, Lakewood, NJ; MTA, Inc., Huntsville, AL; Peregrine Technical Solutions, LLC, Yorktown, VA; QED Systems, LLC, Aberdeen Proving Ground, MD; R2C Support Services, Huntsville, AL; Radiance Technologies, Inc., Huntsville, AL; Scientia, LLC, Bloomington, IN; Selective Intellect, LLC, Livingston, NJ; and Technology Management Group, Inc., King George, VA, have been added as parties to this venture.

Also, OPTRA, Inc., Topsfield, MA; Orion Munitions Development, LLC, Gladstone, MO; and Trust Automation, Inc., San Luis Obispo, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on May 31, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 6, 2016 (81 FR 44044).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–22591 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on August 19, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical Technology Enterprise Consortium (''MTEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A.G.M. Biological Products Development LTD, Nes Ziona, ISRAEL; AbViro, LLC, Bethesda, MD; Actuated Medical, Inc., Bellefonte, MD; applied Medical Device Institute (aMDI) GVSU, Grand Rapids, MI; Aptus, LLC, Clemson, SC; ARMR Systems, Snellville, GA; Axonova Medical, LLC, Philadelphia, PA; Battelle Memorial Institute, Columbus, OH; BioBridge Global, San Antonio, TX; Brown University, Providence, RI; Combat Wounded Veteran Challenge, Inc., Saint Petersburg, FL; DigitalDerm, Inc., Columbia, SC; GeoVax, Inc., Smyrna, GA; Health Research, Inc./Wadsworth Center, Menands, NY; IDIQ Inc., Fallbrook, CA; INCELL Corporation, LLC, San Antonio, TX; Indiana University, Indianapolis, IN; KIYATEC, Inc., Greenville, SC; Longeveron, LLC, Miami, FL; Lynntech, Inc., College Station, TX; MetArmor, Inc., Glen Garden, NJ; NGT–VC 2021 Limited Partnership (NGT3), Nazareth, ISRAEL; Northwestern University, Evanston, IL; Organovo, Inc., San Diego, CA; Propagenix, Inc., Rockville, MD; Rhythmlink International, LLC, Columbia, SC; Scientific & Biomedical Microsystems, LLC (SBM), Glen Burnie, MD; Strategic Marketing Innovations, Inc., Washington, DC; Tonix Pharmaceuticals, Inc., New York, NY; University of California-Irvine, Irvine, CA; University of Cincinnati, Department of Surgery, Cincinnati, OH; University of Maryland-Baltimore, Baltimore, MD; and Virtech Bio, LLC, New York, NY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on March 15, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 14, 2016 (81 FR 22119).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–22586 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on August 10, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Red Hat, Inc., Raleigh, NC; and Think Energy, Houston, TX, have been added as parties to this venture.

Also, American Public Power Association (APPA), Washington, DC; ARC Informatique, Serves, FRANCE; Cornice Engineering, Inc., Grand Canyon, AZ; Elster Solutions, Raleigh, NC; GridIntellect LLC, Madison, AL; LocalGrid Technologies, Mississauga, CANADA; Milbank Manufacturing Co., Kansas City, MO; National Instruments, Austin, TX; Nikos Hatziargyriou Technical Office Consultants, Athens, GREECE; and Utilities Telecom Council, Inc., Washington, DC, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on April 12, 2016. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on May 18, 2016 (81 FR 31259).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–22590 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Patheon API Manufacturing, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 21, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on January 13, 2016, Patheon API Manufacturing, Inc., 309 Delaware Street, Building 1106, Greenville, South Carolina 29605 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Noroxymorphone (9668)	II

The company plans to manufacture the above-listed controlled substances as Active Pharmaceutical Ingredient (API) for clinical trials.

In reference to drug codes 7360 (marihuana), and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: September 12, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–22526 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: R & D Systems, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before October 20, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before October 20, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on April 4, 2015, R & D Systems, Inc., 614 McKinley Place NE., Minneapolis, Minnesota 55413 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Mephedrone (4-Methyl-N-methylcathinone) (1248).	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl) indole) (7118).	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) (7297).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Dimethyltryptamine (7435)	I
Psilocyn (7438)	I
Pentobarbital (2270)	II
Phencyclidine (7471)	II
Cocaine (9041)	II

The company plans to manufacture bulk active pharmaceutical controlled substances for distribution to its customers for analytical purposes.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration.

Dated: September 12, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–22525 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Euticals Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 21, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 4, 2016, Euticals, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229 applied to be registered as a bulk manufacturer the following basic classes of controlled substances:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

Dated: September 12, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–22527 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0024. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 15 grantees of the Tribal Sexual Assault Services Program. The Sexual Assault Services Program (SASP), created by the Violence Against Women Act of 2005 (VAWA 2005), is the first federal funding stream solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault. The SASP encompasses four different funding streams for States and Territories, Tribes, State Sexual Assault Coalitions, Tribal Coalitions, and culturally specific organizations. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault.

The Tribal SASP supports efforts to help survivors heal from sexual assault trauma through direct intervention and related assistance from social service organizations such as rape crisis centers through 24-hour sexual assault hotlines, crisis intervention, and medical and criminal justice accompaniment. The Tribal SASP will support such services through the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 15 respondents (grantees from the Tribal Sexual Assault Services Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal SASP

grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 30 hours, that is 15 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: September 14, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–22512 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0025]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Services to Advocate for and Respond to Youth Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0025. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 45 grantees of the Services to Advocate for and Respond to Youth Program. This is the first Federal funding stream solely dedicated to the provision of direct intervention and related assistance for youth victims of sexual assault, domestic violence, dating violence and stalking. Overall, the purpose of the Youth Services Program is to provide direct counseling, advocacy, legal advocacy, and mental health services for youth victims of sexual assault, domestic violence, dating violence, and stalking, as well as linguistically, culturally, or community relevant services for underserved populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 45 respondents (grantees from the Services to Advocate for and Respond to Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Services to Advocate for and Respond to Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 90 hours, that is 45 grantees completing a form twice a year with an estimated

If additional information is required contact: Jerri Murray, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: September 14, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–22513 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Technical Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0017. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 100 programs providing technical assistance as recipients under the Technical Assistance Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 100 respondents (Technical Assistance providers) approximately one hour to complete a semi-annual progress report twice a year. The semi-annual progress report for the Technical Assistance Program divided into sections that pertain to the different types of activities in which Technical Assistance Providers are engaged. The primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and their subgrantees to enhance the success of local projects they are implementing with VAWA grant funds. In addition, OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence, and stalking and to foster partnerships between organizations that have not traditionally worked together to address violence against women, such as faith- and community-based organizations.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the semi-annual progress report form is 200 hours. It will take approximately one hour for the grantees to complete the form twice a year.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: September 14, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–22511 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Federal Coordination and Compliance Section (FCS); FCS Complaint and Consent Form

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Federal Coordination and Compliance Section, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Stoneman, Acting Chief, Federal Coordination and Compliance Section, 950 Pennsylvania Avenue NW–NWB, Washington, DC 20005 (phone: 202–307–2222).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Complaint and Consent Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1190–0008. The applicable component within the Department of Justice is the Federal Coordination and Compliance Section, in the Civil Rights Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* General public. Information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary and to provide information needed to initiate investigation of the complaint. Respondents are individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4000 respondents will complete each form within approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,000 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: September 15, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–22549 Filed 9–19–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Office of the Secretary

Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2017

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate to be paid to workers performing work on or in connection with Federal contracts covered by Executive Order 13658, beginning January 1, 2017.

Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), was signed by President Barack Obama on February 12, 2014, and raised the hourly minimum wage paid by contractors to workers performing work on covered Federal contracts to: $10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor (the Secretary) in accordance with the methodology set forth in the Order. *See* 79 FR 9851. The Secretary's determination of the Executive Order minimum wage rate also affects the minimum hourly cash wage that must be paid to tipped employees performing work on or in connection with covered contracts. *See* 79 FR 9851–52. The Secretary is required to provide notice to the public of the new minimum wage rate at least 90 days before such rate is to take effect. *See* 79 FR 9851. The applicable minimum wage under Executive Order 13658 is currently $10.15 per hour, in effect since January 1, 2016. *See* 80 FR 55646. The applicable minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts is currently $5.85 per hour, in effect since January 1, 2016. *Id.*

Pursuant to Executive Order 13658 and its implementing regulations at 29 CFR part 10, notice is hereby given that beginning January 1, 2017, the Executive Order minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $10.20 per hour. Notice is also hereby given that, beginning January 1, 2017, the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to $6.80 per hour.

DATES: This notice is effective on September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

Executive Order 13658 was signed by President Barack Obama on February 12, 2014, and raised the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to $10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to the Order. *See* 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the Order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

The Executive Order and its implementing regulations require the Secretary to determine the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

(i) Not less than the amount in effect on the date of such determination;

(ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and

(iii) Rounded to the nearest multiple of $0.05.

Section 2(b) of the Executive Order further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. In order to calculate the annual percentage increase in the CPI–W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI–W for the most recent year available with the CPI–W for the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI–W for the preceding year, in order "to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate." 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate to be paid to workers performing work on or in connection with covered contracts, the Executive Order and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage is to take effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage is to take effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site; on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.*, and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.;* and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)–(iv).

Section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least $4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. *See* 79 FR 9851–52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest $0.05. *Id.* At all times, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

On September 16, 2015, the Administrator published a notice in the **Federal Register** informing the public that, effective January 1, 2016, the Executive Order minimum wage and the minimum cash wage required to be paid to tipped employees covered by the Executive Order would be $10.15 and $5.85 per hour, respectively. *See* 80 FR 55646.

II. The 2017 Executive Order Minimum Wage Rate

In accordance with the methodology set forth in the Executive Order and summarized above, the Department must first determine the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) as published by BLS in order to determine the new Executive Order minimum wage rate. In calculating the annual percentage increase in the CPI, the Department must compare the CPI–W for the most recent year available with the CPI–W for the preceding year. The Department therefore compares the percentage change in the CPI–W between the most recent year (*i.e.,* the most recent four quarters) and the prior year (*i.e.,* the four quarters preceding the most recent year). The current Executive Order minimum wage rate must then be increased by the resulting annual percentage change and rounded to the nearest multiple of $0.05.

In order to determine the Executive Order minimum wage rate beginning January 1, 2017, the Department therefore calculated the CPI–W for the most recent year by averaging the CPI–W for the four most recent quarters, which consist of the first two quarters of 2016 and the last two quarters of 2015 (*i.e.,* July 2015 through June 2016). The Department then compared that data to the average CPI–W for the preceding year, which consists of the first two quarters of 2015 and the last two quarters of 2014 (*i.e.,* July 2014 through June 2015). Based on this methodology, the Department determined that the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) was 0.278%. The Department then applied that annual percentage increase of 0.278% to the current Executive Order hourly minimum wage rate of $10.15, which resulted in a wage rate of $10.18 (($10.15 × .00278) + $10.15); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of $0.05.

The new Executive Order minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2017 is therefore $10.20 per hour.

III. The 2017 Executive Order Minimum Cash Wage for Tipped Employees

As noted above, section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least $4.90, beginning January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. *See* 79 FR 9851–52; 29 CFR 10.28(a). Section 3 of the Executive Order also provides a methodology to be utilized each year in determining the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Pursuant to the Order, in each succeeding year, beginning January 1, 2016, the required cash wage increases by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage rate. For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rate rounded to the nearest $0.05.

In order to determine the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts beginning January 1, 2017, the Department first calculated that 70 percent of the new Executive Order minimum wage rate of $10.20 is $7.14. The Executive Order provides that the current minimum hourly cash wage of $5.85 must increase by the lesser of $0.95 or the amount necessary for the hourly cash wage to equal 70 percent of the applicable Executive Order minimum wage. Because $0.95 is less than $1.29 (the amount necessary for the hourly cash wage to reach 70 percent of $10.20), the hourly cash wage must increase by $0.95.

The new minimum hourly cash wage that must generally be paid to tipped workers performing on or in connection with covered contracts beginning January 1, 2017 is therefore $6.80 per hour.

IV. Appendices

Appendix A to this notice provides a comprehensive chart of the CPI–W data published by BLS that the Department utilized to calculate the new Executive Order minimum wage rate based on the methodology explained herein. Appendix B to this notice sets forth an updated version of the Executive Order 13658 poster that the Department published with its Final Rule, reflecting the updated wage rates that will be in effect beginning January 1, 2017. *See* 79 FR 60732–33. Pursuant to 29 CFR 10.29, contractors are required to notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. Contractors with employees covered by the Fair Labor Standards Act who are performing on or in connection with a covered contract may satisfy the notice requirement by displaying the poster set forth in

Appendix B in a prominent or accessible place at the worksite.

Dated: September 6, 2016.

David Weil,

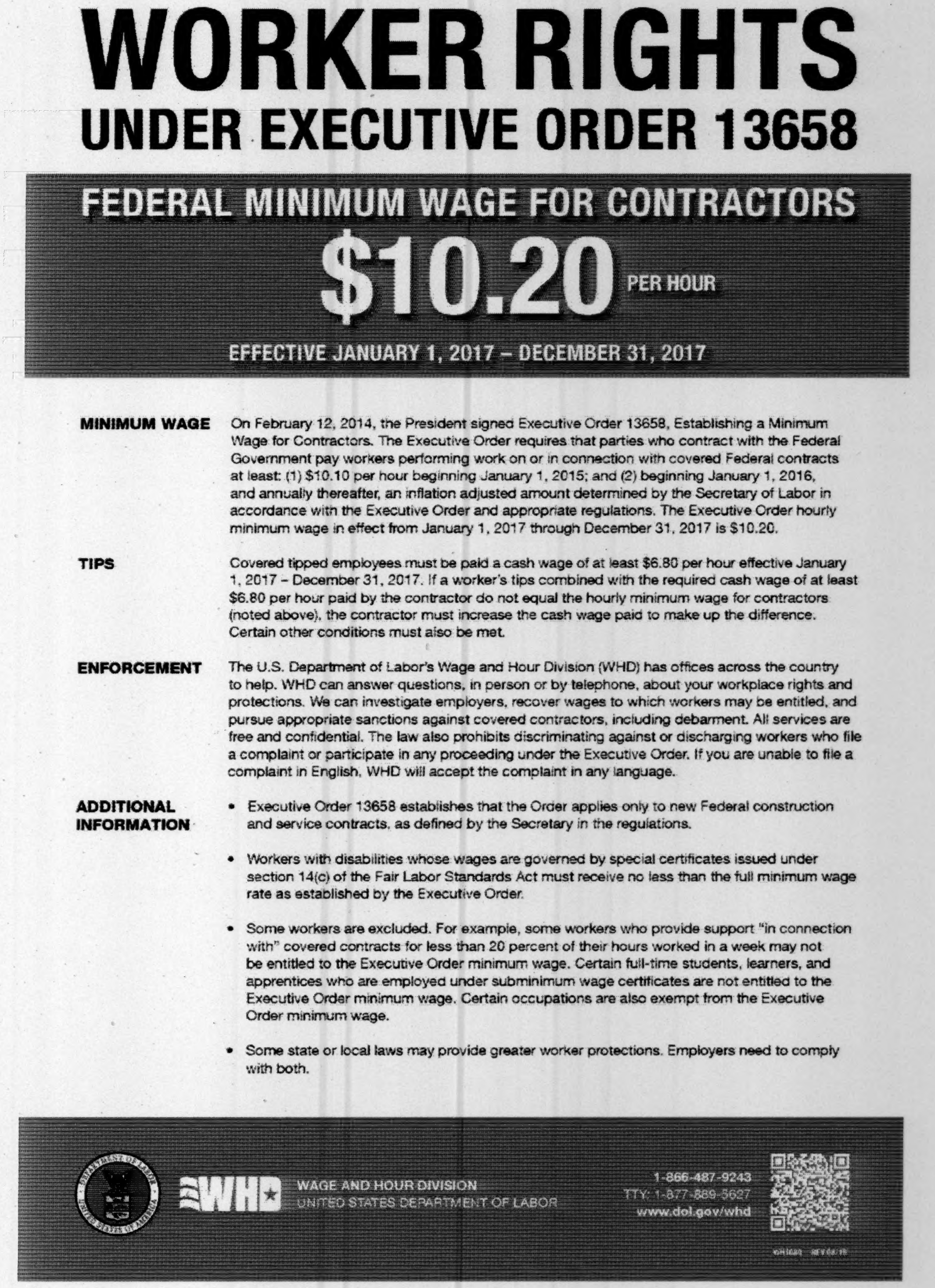
Wage and Hour Administrator.

Appendix A: Data Used To Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2017

Data Source: Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted)

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual Average
2014Q3 to 2015Q2	234.525	234.030	234.170	233.229	231.551	229.909	228.294	229.421	231.055	231.520	232.908	233.804	232.0347
2015Q3 to 2016Q2	233.806	233.366	232.661	232.373	231.721	230.791	231.061	230.972	232.209	233.438	234.444	235.308	232.6792
Annual Percentage Increase	....	....	....	....	....	....	....	....	....	....	....	....	0.278%

Appendix B:



WORKER RIGHTS

UNDER EXECUTIVE ORDER 13658

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$10.20 PER HOUR

EFFECTIVE JANUARY 1, 2017 – DECEMBER 31, 2017

MINIMUM WAGE On February 12, 2014, the President signed Executive Order 13658, Establishing a Minimum Wage for Contractors. The Executive Order requires that parties who contract with the Federal Government pay workers performing work on or in connection with covered Federal contracts at least: (1) $10.10 per hour beginning January 1, 2015; and (2) beginning January 1, 2016, and annually thereafter, an inflation adjusted amount determined by the Secretary of Labor in accordance with the Executive Order and appropriate regulations. The Executive Order hourly minimum wage in effect from January 1, 2017 through December 31, 2017 is $10.20.

TIPS Covered tipped employees must be paid a cash wage of at least $6.80 per hour effective January 1, 2017 – December 31, 2017. If a worker's tips combined with the required cash wage of at least $6.80 per hour paid by the contractor do not equal the hourly minimum wage for contractors (noted above), the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

ENFORCEMENT The U.S. Department of Labor's Wage and Hour Division (WHD) has offices across the country to help. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors, including debarment. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order. If you are unable to file a complaint in English, WHD will accept the complaint in any language.

ADDITIONAL INFORMATION

- Executive Order 13658 establishes that the Order applies only to new Federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must receive no less than the full minimum wage rate as established by the Executive Order.
- Some workers are excluded. For example, some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the Executive Order minimum wage. Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the Executive Order minimum wage. Certain occupations are also exempt from the Executive Order minimum wage.
- Some state or local laws may provide greater worker protections. Employers need to comply with both.

WHD
WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd

[FR Doc. 2016–22515 Filed 9–19–16; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Model Employer Children's Health Insurance Program Notice

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Model Employer Children's Health Insurance Program Notice," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 20, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201608-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Model Employer Children's Health Insurance Program Notice information collection. Employee Retirement Income Security Act (ERISA) section 701(f)(3)(B)(i)(I), Public Health Service Act (PHSA) section 2701(f)(3)(B)(i)(I), and Internal Revenue Code (Code) section 9801(f)(3)(B)(i)(I) require an employer maintaining a group health plan in a State that provides medical assistance under a State Medicaid plan under Social Security Act (SSA) title XIX or child health assistance under a State child health plan under SSA title XXI in the form of premium assistance for the purchase of coverage under a group health plan to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and Children's Health Insurance Program (CHIP) for health coverage of the employee or the employee's dependents. ERISA section 701(f)(3)(B)(i)(II) requires the DOL to provide employers with model language for the CHIP notice. The model includes information on how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance. ERISA section 701(f)(3)(B), PHSA section 2701(f)(3)(B), and Code section 9801(f)(3)(B) authorize this information collection. *See* 29 U.S.C. 1181(f)(3)(b), 42 U.S.C. 300gg–3(f)(3)(B), 26 U.S.C. 9801(f)(3)(B).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0137.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 26, 2016 (81 FR 33550).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0137. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Model Employer Children's Health Insurance Program Notice.

OMB Control Number: 1210–0137.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 5,897,699.

Total Estimated Number of Responses: 175,973,641.

Total Estimated Annual Time Burden: 706,828 hours.

Total Estimated Annual Other Costs Burden: $16,963,859.

Dated: September 14, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–22559 Filed 9–19–16; 8:45 am]

BILLING CODE 4510–29–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–279]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filing for the Commission's consideration concerning negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 21, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–279; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* September 13, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Max E. Schnidman; *Comments Due:* September 21, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–22516 Filed 9–19–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–196 and CP2016–280; MC2016–197 and CP2016–281; MC2016–198 and CP2016–282; MC2016–199 and CP2016–283; MC2016–200 and CP2016–284]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 22, 2016 (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2016–196 and CP2016–280; *Filing Title:* Request of the United States Postal Service to Add Global Expedited Package Services 7 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* September 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* September 22, 2016.

2. *Docket No(s).:* MC2016–197 and CP2016–281; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 62 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* September 22, 2016.

3. *Docket No(s).:* MC2016–198 and CP2016–282; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 63 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* September 22, 2016.

4. *Docket No(s).:* MC2016–199 and CP2016–283; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 239 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* September 22, 2016.

5. *Docket No(s).:* MC2016–200 and CP2016–284; *Filing Title:* Request of the United States Postal Service to Add Parcel Select Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* September 22, 2016.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2016–22615 Filed 9–19–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10208; 34–78844; File No. 265–27]

SEC Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Wednesday, October 5, 2016, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. The meeting will be webcast on the Commission's Web site at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

DATES: The public meeting will be held on Wednesday, October 5, 2016. Written statements should be received on or before October 3, 2016.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE., Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–27 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*https://www.sec.gov/info/smallbus/acsec.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, and the regulations thereunder, Keith Higgins, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: September 15, 2016.

Brent J. Fields,
Committee Management Officer.

[FR Doc. 2016–22562 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE.,Washington, DC 20549–2736.

Extension:
Form S–8; SEC File No. 270–66, OMB Control No. 3235–0066.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form S–8 (17 CFR 239.16b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) is the primary registration statement used by eligible registrants to register securities to be issued in connection with an employee benefit plan. Form S–8 provides verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The likely respondents will be companies. The information must be filed with the Commission on occasion. Form S–8 is a public document. All information provided is mandatory. We estimate that Form S–8 takes approximately 24 hours per response to prepare and is filed by approximately 2,140 respondents. In addition, we estimate that 50% of the preparation time (12 hours) is completed in-house by the filer for a total annual reporting burden of 25,680 hours (12 hours per response x 2,140 responses)

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 13, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22541 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78868; File No. SR–C2–2016–019]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Bylaws Title

September 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 8, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the title of its Bylaws. The text of the proposed rule change is provided below.

[(additions are *italicized;* deletions are [bracketed])

* * * * *

[FIFTH] *SEVENTH* AMENDED AND RESTATED BYLAWS OF C2 OPTIONS EXCHANGE, INCORPORATED

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the title of its Bylaws to correct an inadvertent error. Particularly, the Exchange recently amended its Bylaws and changed the title from "Fourth Amended and Restated Bylaws of C2 Options Exchange, Incorporated" to "Fifth Amended and Restated Bylaws of C2 Options Exchange, Incorporated."[3] The actual title of the effective Bylaws at the time however, was "Sixth Amended and Restated Bylaws of C2 Options Exchange, Incorporated." As such, the title should have been amended to "Seventh Amended and Restated Bylaws of C2 Options Exchange, Incorporated." Accordingly, the Exchange proposes to amend the title to accurately reflect the correct version of the Bylaws. No substantive changes are being made by this proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes correcting an inadvertent error relating to the title of its Bylaws to reflect the actual version will avoid potential confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants. The proposed rule change is merely correcting an inaccurate reference in the Bylaws' title and is making no substantive changes.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–78294 (July 12, 2016) 81 FR 137 [sic] (July 18, 2016) (SR–C2–2016–005).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is merely attempting to correct an inadvertent reference error in the Exchange's Bylaws. The proposed rule change has no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2016–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–019, and should be submitted on or before October 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22540 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78839; File No. SR–CBOE–2016–053]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Price Protection Mechanisms and Risk Controls

September 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2016, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enhance current and adopt new price protection mechanisms and risk controls for orders and quotes.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has in place various price check mechanisms and risk controls that are designed to prevent incoming orders and quotes from automatically executing at potentially erroneous prices or to assist Trading Permit Holders ("TPHs") with managing their risk.[3] These mechanisms and controls are designed to help maintain a fair and orderly market by mitigating potential risks associated with orders trading at prices that are extreme and potentially erroneous, or in extremely large and potentially erroneous volumes, that may be harmful to market participants. The Exchange proposes to amend Rules 6.12(a)(3), 6.13(b)(v), 6.14 and 8.18 to add new, as well as enhance current, price protection mechanisms and risk controls to further prevent potentially harmful and disruptive trading.[4]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Rule 6.12(a)(3) through (5) (limit order price parameters), 6.13(b)(v) (market-width and drill through price check parameters), 6.14 (price protections), 6.53C, Interpretation and Policy .08 (price check parameters for complex orders), and 8.18 (Quote Risk Monitor Mechanism ("QRM")).

Limit Order Price Parameter for Simple Orders

The proposed rule change amends the limit order price parameter for simple orders in Rule 6.12(a)(3). This price parameter currently states simple limit orders will route directly from an order entry firm to an order management terminal ("OMT") designated by the order entry firm when initially routed to the Exchange if:

- Prior to the opening of a series (including before a series is opened following a halt), the order is to buy (sell) at more than an acceptable tick distance ("ATD") above (below) the Exchange's previous day's close; however, this does not apply to CBOE or away market-makers; or
- once a series has opened, the order is to buy (sell) at more than an acceptable tick distance above (below) the disseminated Exchange offer (bid).

The proposed rule change states the System rejects back to a TPH an order to buy (sell) at more than an acceptable tick distance above (below) if:

- Prior to the opening of a series (including during any pre-opening period and opening rotation), (1) the last disseminated national best offer ("NBO") (national best bid ("NBB")), if a series is open on another exchange(s), or (2) the Exchange's previous day's closing price, if a series is not yet open on any other exchange; if the NBBO is locked, crossed or unavailable;[5] or if there is no NBO (NBB) and the previous day's closing price is greater (less) than or equal to the NBB (NBO). However, this does not apply to orders of CBOE or away market-makers; if there is no NBO (NBB) and the Exchange's previous day's closing price is less (greater) than the NBB (NBO); or if there is no NBBO and no Exchange previous day's closing price;
- intraday, the last disseminated NBO (NBB), or the Exchange's best offer (bid) if the NBBO is locked, crossed or unavailable. However, this does not apply if there is no NBBO and no Exchange best bid or offer ("BBO"); or
- during a trading halt (including during any pre-opening period or opening rotation prior to re-opening following the halt), the last disseminated NBO (NBB). However, this does not apply to a buy (sell) order if the NBBO is locked, crossed or unavailable or if there is no NBO (NBB).

Prior to a series opening on CBOE, the series may already be open on another exchange(s), in which case that exchange(s) would be disseminating an NBBO. The NBBO would more accurately reflect the then-current market, rather than the previous day's closing price, and thus the Exchange believes it would be a better measure to use for purposes of determining the reasonability of the prices of orders. If the series is not yet open on any other exchange, the System will continue to use the Exchange's previous day's closing price as the comparison figure. Additionally, the System will use the Exchange's previous day's closing price if the NBBO is locked, crossed or unavailable (and thus unreliable) or if there is no NBO (NBB) and the Exchange's previous day's closing price is greater (less) than or equal to the NBB (NBO). The check will continue to not apply to orders of CBOE or away market-makers, and will also not apply to orders entered when there is no NBO (NBB) and the Exchange's previous day's closing price is less (greater) than the NBB (NBO) or if there is no NBBO and no Exchange previous day's closing price (for example, if the order is in a newly listed series) (and thus no reliable measure against which to compare the price of the order to determine its reasonability). Prior to the opening of a series, and the NBBO is unavailable, the previous day's closing price is the most relevant pricing information to determine the price at which an investor may want to buy or sell within a series, and the Exchange believes it is a reasonable substitute for the NBB or NBO when not available. With respect to the proposed provisions regarding the applicability of the check when there is no NBO (NBB) against which the price of the buy (sell) order can be compared to determine price reasonability, the Exchange believes using the previous day's closing price is appropriate if that price is greater (less) than or equal to the NBB (NBO) because it does not cross the disseminated NBB (NBO). On the contrary, if that price is less (greater) than the NBB (NBO), and thus would cross the disseminated NBB (NBO), the Exchange believes that closing price is too far away from what an NBO (NBB) would be if an offer (bid) quote or sell (buy) order were to be entered and essentially creates a crossed, unreliable market.

Once a series has opened on CBOE, this check will compare the price of a buy (sell) order to the last disseminated NBO (NBB) rather than the Exchange best offer (bid). The NBBO would more accurately reflect the then-current market, rather than the Exchange BBO, and thus the Exchange believes it would be a better measure to use for purposes of determining the reasonability of the prices of orders. The System will continue to use the Exchange BBO if the NBBO is locked, crossed or unavailable (and thus unreliable). This check will not apply intraday if there is no NBBO and no BBO (and thus no reliable measure against which to compare the price of the order to determine its reasonability).

With respect to orders entered during a trading halt (including during any pre-opening period or opening rotation prior to re-opening following a halt), the proposed rule change states the System will use the last disseminated NBO (NBB) rather than the Exchange's previous day's closing price (as the current rule states). If a halt occurs during the trading day, the NBO (NBB) would more accurately reflect the then-current market rather than the previous day's closing price, which would be stale by that time. This check will not apply to orders if the NBBO is locked, crossed or unavailable (and thus unreliable) or if there is no NBO (NBB) (and thus no reliable measure against which to compare the price of the order to determine its reasonability).

The rule currently states the Exchange determines the ATD on a series-by-series[6] and premium basis and will be no less than five minimum increment ticks. The proposed rule change amends the minimum ATD to be two minimum increment ticks rather than five. The Exchange believes it may be appropriate to set the ATD for certain classes (depending on the minimum increment and premium) or during different trading sessions (as further discussed below) to be fewer than five to ensure that the ATD price is not so far away from the market price and thus this price check is effective given the market model or market conditions.[7] Additionally, because market conditions during pre-opening periods, trading rotations, and trading halts,[8] are different than those present during regular trading hours, the proposed rule change provides the Exchange with flexibility to apply a different ATD during those times (which the Exchange may want to be less than the current minimum of five). The Exchange believes it is appropriate to have the ability to apply a different ATD during the pre-open period or opening rotation so the check does not impact the Exchange's ability to open an option or determination of the opening price. The Exchange may also want to apply a different ATD during a halt, as pricing during those times may be volatile and inaccurate.[9]

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[4] The proposed rule change makes conforming changes to other rules, as further discussed below.

[5] If the NBBO (or BBO) is not currently being disseminated, the NBBO (or BBO) will be considered "unavailable."

[6] The proposed rule change amends this to be class-by-class rather than series-by-series. The Exchange generally sets parameters on a class-by-class basis; however, pursuant to Rule 8.14, Interpretation and Policy .01, if the Exchange authorizes a group of series of a class to trade on the Hybrid Trading System and the remaining groups of series of a class to trade on the Hybrid 3.0 Trading System, the Exchange will establish trading parameters on a group basis rather than class basis.

[7] The Exchange notes Rule 6.13(b)(v) sets the minimum ATD at two minimum increments for the drill through protection.

The proposed rule change deletes the Exchange's flexibility to not apply this price parameter to immediate-or-cancel orders, as the Exchange believes these orders are also at risk of execution at extreme and potentially erroneous prices and thus will benefit from applicability of these checks. The proposed rule change states this price parameter will not apply to orders routed from a PAR workstation or OMT. Orders routed from a PAR workstation or OMT are subject to manual handling, so the PAR or OMT operator will have evaluated the price of an order based on then-existing market conditions prior to submitting the order for electronic execution, and thus there is minimal risk of execution at an erroneous price.

The proposed rule change also states this price parameter does not apply to orders with a stop contingency. By definition, the stop contingency[10] is triggered for a buy order if there is a last sale or bid at or above the stop price and for a sell order if there is a last sale or offer at or below the stop price. As a result, buy orders with a stop contingency are generally submitted at a triggering price that is above the NBO, and sell orders with a stop contingency are generally submitted at a triggering price that is below the NBB. Because these orders are expected to be priced outside the NBBO, the Exchange will not apply this check to not interfere with the application of the stop contingency.[11]

Drill Through Price Check Parameter

The proposed rule change amends the drill through price check parameter in Rule 6.13(b)(v). Currently, the System will not automatically execute a marketable order if the execution would follow an initial partial execution on the Exchange and would be at a subsequent price not within an ATD from the initial execution (determined by the Exchange on a series-by-series and premium basis for market orders and/or marketable limit orders[12]). An ATD may be no less than two minimum increment ticks. If an execution is suspended because executing the remaining unexecuted portion of an order would exceed the drill through ATD, then such unexecuted portion will be exposed pursuant to the Hybrid Agency Liaison ("HAL") process in Rule 6.14A using the ATD as the exposure price. If a quantity remains at the conclusion of the HAL process or if the order has already been subject to the HAL process of if the order is not eligible for HAL, the remaining unexecuted quantity will route via the order handling system pursuant to Rule 6.12.

Pursuant to the proposed rule change, the drill through protection functions in a similar manner. The proposed rule change clarifies how the System handles orders that were not exposed prior to trading up to the drill through price and orders that traded up to the drill through price following exposure. Specifically, under the proposed rule change, if a buy (sell) order not yet exposed via HAL partially executes, and the System determines the unexecuted portion would execute at a subsequent price higher (lower) than the price that is an ATD above (below) the NBO (NBB) (the "drill through price"), the System will not automatically execute that portion and will expose[13] that portion via HAL at the better of the NBBO and the drill through price (if eligible for HAL). The Exchange will determine the ATD on a class and premium basis (which may be no less than two minimum increment ticks),[14] which the Exchange will announce via Regulatory Circular. If a buy (sell) order is exposed via HAL (other than pursuant to the previous sentence) or the Solicitation Auction Mechanism ("SAL")[15] and, following the exposure period pursuant to Rule 6.14A or 6.13A, respectively, the System determines the order (or any unexecuted portion) would execute at a price higher (lower) than the drill through price, the System will not automatically execute the order (or unexecuted portion).[16]

Under the proposed rule change, rather than route via the order handling system, these orders (or unexecuted portions) will rest in the book (based on the time at which they enter the book for priority purposes) for a time period in milliseconds (which the Exchange will determine and announce via Regulatory Circular and will not exceed three seconds)[17] with a price equal to the drill through price.[18] This time period will provide an additional opportunity for execution for these orders (or unexecuted portions) at a price that does not appear to be erroneous. If the order (or any unexecuted portion) does not execute during that time period, the System cancels it. Buy (sell) orders (or any unexecuted portion) not eligible for HAL or SAL will continue to not automatically execute at a subsequent price higher (lower) than the drill through price and will route it via the order handling system pursuant to Rule 6.12 (except orders (or any unexecuted portions) that by their terms cancel if they do not execute immediately (such as immediate-or-cancel, fill-or-kill, intermarket sweep, and market-maker trade prevention orders) will be cancelled). To avoid any confusion, the proposed rule change also clarifies this drill through check does not apply to executions of orders following exposure via HAL at the open pursuant to Rule 6.2B, Interpretation and Policy .03, which instead are subject to a separate drill through protection set forth in that rule.[19]

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[8] Pursuant to Rule 6.1A(i), the Exchange may make a determination for Extended Trading Hours different from that made for Regular Trading Hours to the extent the rules allow the Exchange to make a determination, including on a class-by-class basis. Thus, the Exchange may set a different ATD for classes trading during Extended Trading Hours than the ATD set for those classes during Regular Trading Hours.

[9] Note Rule 6.12, Interpretation and Policy .01 permits a senior official on the Exchange Help Desk or two Floor Officials to grant intra-day relief by widening or inactivating one or more of the applicable ATD parameters settings in the interest of a fair and orderly market.

[10] *See* Rule 6.53.

[11] The proposed rule change also makes nonsubstantive changes to Rule 6.12, including deletion of an extraneous period.

[12] Pursuant to the rule filing proposing this language, the intent of this provision is to allow the Exchange to determine to apply the drill through price check parameter, as well as the market-width price check parameter, to market orders and/or marketable limit orders. *See* Securities Exchange Act Release No. 34–63191 (October 27, 2010), 75 FR 67411 (November 2, 2010) (SR–CBOE–2010–094) (notice of filing and immediate effectiveness of proposed rule change related to the Hybrid automatic execution feature, including a change to allow CBOE to determine "to apply these price check parameters to market and/or marketable limit orders"). Currently, the Exchange applies the market-width check to market orders and the drill through check to market and marketable limit orders. The proposed rule change merely removes this flexibility from the Rules and codifies the current practice (which is permitted under the current Rule).

[13] The current HAL exposure period is 20 milliseconds.

[14] The proposed rule change amends this to be class-by-class rather than series-by-series. The Exchange generally sets parameters on a class-by-class basis; however, pursuant to Rule 8.14, Interpretation and Policy .01, if the Exchange authorizes a group of series of a class to trade on the Hybrid Trading System and the remaining groups of series of a class to trade on the Hybrid 3.0 Trading System, the Exchange will establish trading parameters on a group basis rather than class basis.

[15] The proposed rule change expands this to include SAL, a similar price improvement auction the Exchange may activate in classes in which it did not activate HAL. In classes in which SAL is activated, an order eligible for SAL will be exposed immediately and would not partially execute prior to being exposed via SAL. For this reason, SAL is not included in proposed Rule 6.13(v)(B)(I).

[16] The proposed rule change makes corresponding changes to Rules 6.13A and 6.14A to clarify orders (or portions) that do not execute following the applicable exposure process are subject to the drill through price check parameter in proposed Rule 6.13(b)(v)(B). The proposed rule change also amends Rule 6.14A to provide orders (or any unexecuted portions) may initiate a HAL at the better of the drill through price and NBBO and make nonsubstantive changes, including deletion of an extra space and use of plain English.

[17] The Exchange intends to initially set this time period at two seconds.

[18] Any order (or unexecuted portion) that by its terms cancels if it does not execute immediately (including immediate-or-cancel, fill-or-kill, intermarket sweep, and market-maker trade prevention orders) will be cancelled rather than rest in the book for this time period in accordance with the definition of those order types.

The following examples illustrate the new functionality to briefly rest orders in the book in connection with the drill through price check parameter:

Example #1

Suppose CBOE's market for a series in a class with a 0.05 minimum increment is 0.90–1.00, represented by a quote for 10 contracts on each side (the quote offer is Quote A). The following sell orders or quote offers also rest in the series: 10 contracts at 1.05 (Order A), 10 contracts at 1.10 (Quote B), 10 contracts at 1.15 (Order B), and 100 contracts at 1.20 (Order C). The market for away exchanges is 0.80–1.25. The Exchange's drill through amount for the class is three ticks (or 0.15), and the drill through resting time period is two seconds. The System receives an incoming order to buy 100 at 1.30, which executes against resting orders and quotes as follows: 10 against Quote A at 1.00, 10 against Order A at 1.05, 10 against Quote B at 1.10, and 10 against Order B at 1.15. The System will not automatically execute the remaining 60 contracts from the incoming order against Order C, because 1.20 is more than 0.15 away from the initial execution price of 1.00 and thus exceeds the drill through price check. The 60 unexecuted contracts are then exposed pursuant to HAL at 1.15 (which is the drill through price, and better than the NBO). No responses to trade against the remaining 60 contracts are entered during the auction, so the 60 contracts remain unexecuted. These contracts then rest in the book for two seconds at a price of 1.15. No incoming orders are entered during that time period to trade against the remaining 60 contracts, so the System cancels that remaining portion of the original incoming order.

Example #2

Suppose CBOE's market for a series in a class with a 0.05 minimum increment is 0.90–1.00, represented by a quote for 10 contracts on each side (the quote offer is Quote A). The following sell orders or quote offers also rest in the series: 10 contracts at 1.05 (Order A), 10 contracts at 1.10 (Quote B), 10 contracts at 1.15 (Order B), and 100 contracts at 1.20 (Order C). The market for away exchanges is 0.80–1.10, with 5 contracts available on each side. The Exchange's drill through amount for the class is three ticks (or 0.15), and the drill through resting time period is two seconds. The System receives an incoming order to buy 100 at 1.30, which executes against resting orders and quotes as follows: 10 against Quote A at 1.00, 10 against Order A at 1.05, and 10 against Quote B at 1.10. The System will not automatically execute the remaining 70 contracts from the incoming order against Orders B and C, because CBOE no longer has size available at the NBBO. The 70 unexecuted contracts are then exposed pursuant to HAL at 1.10 (which is the NBO). No responses to trade against the remaining 70 contracts are entered during the auction, so 5 contracts route away to trade at 1.10 against the 5 contracts available at an away exchange. The best offer from an away exchange then changes to 1.25. Of the remaining 65 unexecuted contracts from the incoming order, 10 trade against Order B at 1.15. The System will not automatically execute the remaining 55 contracts from the incoming order against Order C, because 1.20 is more than 0.15 away from the initial execution price of 1.00 and thus exceeds the drill through price check. These contracts will not be exposed pursuant to HAL again, and instead will rest in the book for two seconds at a price of 1.15. An incoming order to buy 20 at 1.15 is entered after one second, which trades against 20 of the 55 resting contracts. No other incoming orders are entered during that time period to trade against the remaining 35 contracts, so the System cancels that remaining portion of the original incoming order.

TPH-Designated Risk Settings

The proposed rule change amends Rule 6.14 to authorize the Exchange to share any TPH-designated risk settings in the system with a Clearing TPH that clears Exchange transactions on behalf of the TPH. Rule 6.20(a) states unless otherwise provided in the Rules, no one but a TPH, an Order Book Official designated by the Exchange pursuant to Rule 7.3, or PAR Official designated by the Exchange pursuant to Rule 7.12 may make any transaction on the Exchange. All Exchange transactions must be submitted for clearance to the Options Clearing Corporation (the "Clearing Corporation") and are subject to the Clearing Corporation's rules. For each Exchange transaction in which it participates, a TPH must immediately give up the name of the Clearing TPH through which the Exchange transaction will be cleared.[20] Every Clearing TPH is responsible for the clearance of the Exchange transactions of such Clearing TPH and each TPH that gives up such Clearing TPH's name pursuant to a letter of authorization, letter of guarantee or authorization given by such Clearing TPH to such TPH, which authorization must be submitted to the Exchange.[21]

Thus, while not all TPHs are Clearing TPHs, all TPHs require a Clearing TPH's consent to clear Exchange transactions on their behalf in order to conduct business on the Exchange. The letter of authorization or guarantee, or other authorization, describes the relationship between the TPH and Clearing TPH and provides the Exchange with notice of which Clearing TPHs have relationships with which TPHs. The Clearing TPH that guarantees the TPH's Exchange transactions has a financial interest in understanding the risk tolerance of the TPH. This proposed rule change would provide the Exchange with authority to provide Clearing TPHs directly with information that may otherwise be available to such Clearing TPHs by virtue of their relationship with respective TPHs.[22]

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[19] The proposed rule change amends the market width price check parameter in Rule 6.13(b)(v) (proposed Rule 6.13(b)(v)(A)) to be determined on a class-by-class basis rather than series-by-series. The Exchange generally sets parameters on a class-by-class basis; however, pursuant to Rule 8.14, Interpretation and Policy .01, if the Exchange authorizes a group of series of a class to trade on the Hybrid Trading System and the remaining groups of series of a class to trade on the Hybrid 3.0 Trading System, the Exchange will establish trading parameters on a group basis rather than class basis. The proposed rule change makes additional nonsubstantive changes to Rule 6.13(b)(v), including separation of the provisions regarding the market-width price check parameter from those regarding the drill through price check parameter and use of plain English. The proposed rule change also amends Rule 6.2B, Interpretation and Policy .03 to update the cross-reference to the drill through price check parameter and indicate the Exchange will determine the ATD for the opening drill through protection on a class-by-class rather than series-by-series basis consistent with the proposed rule change described above.

[20] *See* Rule 6.21.

[21] *See id.*

The risk settings that the Exchange may share with Clearing TPHs include, but are not limited to, settings under Rule 8.18 (related to QRM, as further described below), and will include settings under proposed Rule 6.14(d) (related to order entry and execution rate checks, as described below) and (e) (related to maximum contract size, as described below). To the extent the Exchange proposes additional rules providing for TPH-designated risk settings other than those in current rules and this rule filing, the Exchange will be able to share those settings with Clearing TPHs under this proposed change as well.[23] Other options exchange [sic] have similar rules permitting them to share member-designated risk settings with other members that clear transactions on the member's behalf.[24]

Put Strike Price/Call Underlying Value Checks

The proposed rule change amends the put strike price and call underlying value checks in Rule 6.14(a). Pursuant to these checks, the System rejects back to the TPH a quote or buy limit order for (1) a put if the price of the quote bid or order is greater than or equal to the strike price of the option, or (2) a call if the price of the quote bid or order is greater than or equal to the consolidated last sale price of the underlying security, with respect to equity and exchange-traded fund options, or the last disseminated value of the underlying index, with respect to index options. The proposed rule change extends this check to apply to market orders (or any remaining size after partial execution).

With respect to put options, a TPH seeks to buy an option that could be exercised into the right to sell the underlying. The value of a put can never exceed the strike price of the option, even if the underlying goes to zero. For example, one put for stock ABC with a strike price of $50 gives the holder the right to sell 100 shares of ABC for $50, no more or less. Therefore, it would be illogical to pay more than $50 for the right to sell shares of ABC, regardless of the price of ABC. Under this check, the Exchange deems any put bid or buy limit order with a price that equals or exceeds the strike price of the option to be erroneous and rejects it, and the Exchange believes it would be appropriate to similarly reject a market order (or remaining size after partial execution) that would execute at that erroneous price.

With respect to call options, a TPH seeks to buy an option that could be exercised into the right to buy the underlying. The Exchange does not believe a derivative product that conveys the right to buy the underlying should ever be priced higher than the prevailing value of the underlying itself. In that case, a market participant could purchase the underlying at the prevailing value rather than pay a larger amount for the call. Accordingly, under this check, the Exchange rejects bids or buy limit orders for call options with prices that are equal to or in excess of the value of the underlying. As an example, suppose a TPH submits an order to buy an ABC call for $11 when the last sale price for stock ABC is $10. The System rejects this order. The Exchange believes it would be appropriate to similarly reject a market order (or remaining size after partial execution) that would execute at that erroneous price.

The Exchange also proposes to amend Rule 6.14(a) to provide the Exchange will not (as opposed to have the discretion not to) apply the call check to a class during Extended Trading Hours. The Exchange currently does not apply the check during that trading session and is only deleting its ability to apply the check during that trading session, which it does not expect to do.[25] Additionally, the proposed rule change states the put and call checks will not apply to market orders that execute during the opening process as set forth in Rule 6.2B to avoid impacting the determination of the opening price. Separate price protections apply during the opening process, including the drill through protection in Rule 6.2B.[26]

Quote Inverting NBBO Check

The proposed rule change amends Rule 6.14(b) regarding the quote inverting NBBO check. Pursuant to this check, if CBOE is at the NBO (NBB), the System rejects a quote back to a Market-Maker if the quote bid (offer) crosses the NBO (NBB) by more than a number of ticks specified by the Exchange. If CBOE is not at the NBO (NBB), the System rejects a quote back to a Market-Maker if the quote bid (offer) locks or crosses the NBO (NBB).[27] If the NBBO is unavailable, locked or crossed, then this check compares the quote to the BBO (if available). The rule is currently silent on what happens if the BBO is also unavailable. Therefore, the proposed rule change clarifies the System does not apply this check to incoming quotes when the BBO is also unavailable, as there is no then-current price to use as a comparison to determine the reasonability of the quote. The proposed rule change also clarifies this is true when a series is open for trading.

The proposed rule change further clarifies the times when this check applies. Current Rule 6.14(b)(ii) provides the Exchange may not apply the check during the pre-opening, a trading rotation, or trading halt. Proposed Rule 6.14(b)(ii) states prior to the opening of a series (including during any pre-opening period and opening rotation), the System does not apply this check to incoming quotes if the series is not open on another exchange. This is consistent with flexibility in the current rule permitting the Exchange to apply (or not apply) the check prior to the open. The Exchange believes without inputs of pricing from other exchanges, it is appropriate to not apply the check if a series is not yet open on another exchange to avoid rejecting quotes that may be consistent with market pricing not yet available in the System. Proposed Rule 6.14(b)(iii) deletes the Exchange's flexibility to apply the quote inverting NBBO check during a trading halt. The Exchange currently does not apply the check to quotes entered during these times and does not expect to do so. The proposed rule change moves the provision permitting a senior official at the Exchange's Help Desk to determine not to apply this check in the interest of maintaining a fair and orderly market to proposed Rule 6.14(b)(iv).

Execution of Quotes That Lock or Cross NBBO

The proposed rule change amends the provision related to the execution of quotes that lock or cross the NBBO in current Rule 6.14(b)(iii). As this is a separate limitation on execution than the quote inverting NBBO check in Rule 6.14(b),[28] the proposed rule change moves this limitation to proposed Rule 6.14(c) (and makes other nonsubstantive changes to the numbering and lettering within that paragraph, as well as adding a name to the paragraph). The rule currently states if the System accepts a quote that locks or crosses the NBBO, the System executes the quote bid (offer) against quotes and orders in the book at a price(s) that is the same or better than the best price disseminated by an away exchange(s) up to the size available on the Exchange and either (1) cancels any remaining size of the quote, if the price of the quote locks or crosses the price disseminated by the away exchange(s), or (2) books any remaining size of the quote, if the price of the quote does not lock or cross the price of the away exchange(s); provided, if a quote inverts another quote, it is subject to Rule 6.45A(d)(ii) or 6.45B(d)(ii).

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[22] The Exchange will share a TPH's risk settings with its Clearing TPH(s) upon request from the Clearing TPH(s).

[23] The proposed rule change also makes nonsubstantive changes to Rule 6.14, including adding risk controls to the name of the rule and an introductory sentence that the System's acceptance and execution of orders and quotes are subject to the price protection mechanisms and risk controls in Rule 6.14 and other rules.

[24] *See, e.g.,* Miami International Securities Exchange, LLC ("MIAX") Rule 500; NASDAQ OMX BX, Inc. ("BX") Chapter VI, Section 20; NYSE Arca, Inc. ("Arca") Rule 6.2A(a); NYSE MKT LLC ("MKT") Rule 902.1NY(a); and NASDAQ OMX PHLX LLC ("PHLX") Rule 1016.

[25] Note the current rule states the check does not apply if market data for the underlying is unavailable. If the value of the underlying is not currently being disseminated, market data for the underlying will be considered "unavailable."

[26] The Exchange also makes a nonsubstantive change to Rule 6.14(a) so the language reads "greater than or equal to" rather than "equal to or greater than," which is the standard phrase.

[27] The System also cancels any resting quote of the Market-Maker in the same series.

Rules 6.45A(d)(ii) and 6.45B(d)(ii) state the System will not disseminate an internally crossed market, and if a Market-Maker submits a quote that would invert an existing quote, the System will change the incoming quote so it locks the existing quote. The Exchange then disseminates the locked market, and both quotes will be deemed firm. When the market locks, a counting period will begin during which Market-Makers whose quotes are locked may eliminate the locked quote (provided a Market-Maker will be obligated to execute orders eligible for automatic execution at its disseminated quote). If at the end of the counting period the quotes remain locked, the locked quotes will automatically execute against each other in accordance with the applicable allocation algorithm.

Under current Rule 6.14(b)(iii) (which is being moved to proposed paragraph (c)), an incoming quote that locks or crosses the NBBO would execute against quotes that are at the same best price disseminated by an away exchange up to the size available on the Exchange. However, if the only available size on the Exchange at that best price is a Market-Maker quote, any counting period under the quote lock rule would cause the Exchange to disseminate a quote that locks that of an away exchange (which should be avoided pursuant to Rule 6.82 and the Options Linkage Plan). To prevent this, the proposed rule change states if the Exchange has established a counting period for a class pursuant to Rule 6.45A(d)(i) or 6.45B(d)(i), then notwithstanding Rule 6.45A(d) or 6.45B(d), if CBOE (represented by a Market-Maker quote offer (bid)) and an away exchange(s) are each at the NBO (NBB), the System rejects an incoming Market-Maker quote bid (offer) (or unexecuted portion after the quote trades against any resting orders in the Book at the NBO (NBB)) that locks or crosses resting Market-Maker quote offer (bid) at the NBO (NBB).[29] For example, suppose the NBBO is 1.00–1.20 and the BBO is 0.95–1.20 in equity class ABC. The 1.20 offer on CBOE consists of a Market-Maker quote. Suppose the counting period in Rule 6.45A(d)(i) is set at one second. If another Market-Maker submits a quote bid for 1.20, rather than lock with the resting Market-Maker quote offer of 1.20 pursuant to the quote lock provision, the incoming quote bid will be rejected.

Incoming bid (offer) quotes that lock or cross the NBO (NBB) if CBOE alone is at the NBO (NBB) and no Market-Maker quote represents the NBO (NBB), if an away exchange alone is at the NBO (NBB), or if there is no counting period will continue to be handled as described in current Rule 6.14(b)(iii) (proposed paragraph (c)) (the System executes the quote bid (offer) against quotes and orders in the book at prices that are the same or better than the best price disseminated by an away exchange(s) up to the size available on CBOE (which amount is none if CBOE is not at the NBO (NBB)), and cancels the remaining size).

In addition, the current rule is silent regarding the applicability of this limitation on execution to quotes when the NBBO is locked, crossed or unavailable. The purpose of this provision is to prevent trade-throughs and displays of locked and crossed markets in accordance with the Options Linkage Plan. However, when the NBBO is locked or crossed, it is unreliable for comparison purposes. Additionally, if there is no NBBO available, then there is no measure against which the System can compare the price of an incoming quote. Therefore, the proposed rule change states if the NBBO is locked, crossed or unavailable, the System does not apply this check to incoming quotes. The linkage rules similarly provide exceptions to the prohibitions on trade-throughs and crossed markets when there is a crossed market or systems or equipment malfunctions.[30] The proposed rule change adds a senior official at the Exchange's Help Desk may determine not to apply this check in the interest of maintaining a fair and orderly market.[31] The Exchange may believe it is appropriate to disable this check in response to a market event or market volatility to avoid inadvertently cancelling quotes not erroneously priced but rather priced to reflect potentially rapidly changing prices.

Order Entry, Execution and Price Parameter Rate Checks

The proposed rule change adopts order entry, execution and price parameter rate checks in proposed Rule 6.14(d). Currently, QRM (described below) provides Market-Makers with functionality to help manage their risk by limiting the number of quotes they may execute in a specified period of time (based on several parameters). The proposed order entry and execution rate checks will provide similar risk-management functionality for orders. These order risk protections are designed to aid TPHs in their risk management by supplementing current and proposed price reasonability checks with activity-based order protections that protect against entering too many orders, executing too many contracts, and having too many orders rejected because of price protection parameters in a short time, based on parameters entered by TPHs.

Specifically, the proposed rule change states each TPH must provide to the Exchange parameters for an acronym or, if the TPH requests, a login,[32] for each of the following rate checks. The System will count each of the following over rolling time intervals, which the Exchange will set and announce via Regulatory Circular:

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[28] The quote inverting NBBO check rejects quotes back to a Market-Maker if the quote bid (offer) crosses the NBO (NBB) by more than a specified number of ticks. The limitation on execution of quote that lock or cross the NBBO describes how the System will handle quotes that lock or cross the NBBO (but not by more than the specified number of ticks and thus are accepted).

[29] Rules 6.45A(d)(ii) and 6.45B(d)(ii) continue to apply to inverted quotes in other circumstances.

[30] *See* Rules 6.81 and 6.82.

[31] Pursuant to Exchange procedures, any decision to not apply the quote inverting NBBO check, as well as the reason for the decision, will be documented, retained, and periodically reviewed.

[32] A TPH firm may have multiple acronyms. For each Trading Permit a TPH purchases, it receives up to three log-ins (the TPH may elect to use fewer than the three). Additionally, a TPH may purchase additional bandwidth packets, each of which comes with three log-ins. The TPH determines which log-ins will be used under which acronym. While not required, TPH firms, for example, may use one acronym, or log-in, for its proprietary business and another for its customer agency business (if the firm conducts both). Additionally, TPH firms sometimes use different log-ins for different customers. Allowing TPHs to set parameters for these protection mechanisms will allow TPHs to minimize the possibility of these mechanisms from affecting multiple businesses, if they choose to set up acronyms and log-ins in a manner that keeps these business separate.

(1) The total number of orders (of all order types) and auction responses entered and accepted by the System ("orders entered");

(2) the total number of contracts (from orders and auction responses) executed on the System, which does not count executed contracts from orders submitted from a PAR workstation or an OMT or stock contracts executed as part of stock-option orders ("contracts executed");

(3) the total number of orders the System books or routes via the order handling system[33] pursuant to the drill through price check parameter (as amended by this proposed rule change) in proposed Rule 6.13(b)(v)(B) ("drill through events"); and

(4) the total number of orders the System cancels or routes via the order handling system pursuant to the limit order price parameter in Rule 6.12(a)(3) through (5) ("price reasonability events").

When the System determines the orders entered, contracts executed, drill through order [sic] events or price reasonability events within the applicable time interval exceeds a TPH's parameter, the System (1) rejects all subsequent incoming orders and quotes, (2) cancels all resting quotes (if the acronym or login is for a Market-Maker), and (3) for the orders entered and contracts executed checks, if the TPH requests (*i.e.,* this part of the proposed functionality is optional), cancels resting orders (either all orders, orders with time-in-force of day, or orders entered on that trading day) for the acronym or login, as applicable.

The System will not accept new orders or quotes from a restricted acronym or login, as applicable, until the Exchange receives the TPH's manual notification (in a form and manner determined by the Exchange, which will be announced by Regulatory Circular) to reactivate its ability to send orders and quotes for the acronym or login. While an acronym or login is restricted, a TPH may continue to interact with any resting orders (*i.e.,* orders not cancelled pursuant to this protection) entered prior to its acronym or login becoming restricted, including receiving trade execution reports and canceling resting orders.

While these order entry and execution rate checks are mandatory for all TPHs, the Exchange is not proposing to establish minimum or maximum values for the parameters described in (1) through (4) above. The Exchange believes this approach will give TPHs the flexibility needed to appropriately tailor these checks to their respective risk management needs. In this regard, the Exchange notes each TPH is in the best position to determine risk settings appropriate for its firm based on its trading activity and business needs. The Exchange will set the values of the time intervals[34]; however, the Exchange believes the amount of flexibility provided to TPHs by having no minimum or maximum values, or default values, for the parameters, as well as by permitting the parameters to be set at the acronym or login level, sufficiently allows TPHs to adjust their parameter inputs to these intervals in accordance with their business models and risk management needs.

The Exchange believes these proposed order entry and execution rate checks will assist TPHs in better managing their risk when trading on CBOE. In particular, the proposed rule change provides functionality that allows TPHs to set risk management thresholds for the number of orders entered or contracts executed on the Exchange during a specified period. This is similar to how other options exchanges have implemented activity-based risk management protections, and the Exchange believes this functionality will likewise benefit TPHs.[35] Additionally, similar to QRM, which includes a parameter for the maximum number of QRM incidents that will trigger cancellation of their orders and quotes once reached, the proposed rule change includes parameters for a maximum number of orders that book or route pursuant to the drill through check and cancel or route pursuant to the limit order price check. This could occur, for example, if a system issue is causing many orders to be submitted at prices that are too far away from the market and likely erroneous; this protection will help prevent execution of these erroneous orders.

The below examples illustrate how these order entry and execution rate checks will work:

Example #1—Order Entry Rate Check

A TPH designates an allowable orders entered rate of 9 orders/1 minute for acronym ABC.[36] The TPH enters three orders for acronym ABC, then enters nine additional orders one minute and thirty seconds later (for the same acronym). Because the orders entered did not exceed the TPH's designated rate for acronym ABC within one minute (the second batch of orders was entered more than one minute after the first batch of orders), acronym ABC is not restricted from submitting additional orders. Thirty seconds later, the TPH enters one additional order for acronym ABC. Entry of this order triggers the rate check because the TPH entered 10 orders in less than one minute for acronym ABC. At this time, acronym ABC becomes restricted,[37] and the System will reject all orders (and quotes, if acronym ABC is a Market-Maker), cancel any resting quotes (if acronym ABC is a Market-Maker), and cancel resting orders (if the TPH opted to enable that functionality). The TPH must contact the Exchange to resume trading for acronym ABC.

Example #2—Contracts Executed Rate Check

A TPH designates an allowable contracts executed rate of 999 contracts/1 minute for acronym DEF. The TPH enters an order to buy 600 contracts for acronym DEF, which immediately executes against a resting quote offer. One minute and 15 seconds after that execution, the TPH enters an order to sell 500 contracts for acronym DEF, which immediately executes against a resting quote bid. Because the two executions did not exceed the TPH's designated rate for acronym DEF within one minute (the second execution occurred more than one minute after the first execution), acronym DEF is not restricted from submitting additional orders. Forty-five seconds after the second execution, the TPH enters an order to buy 500 contracts for acronym DEF, which immediately executes against a resting sell order. Execution of this third order triggers the rate check because the TPH executed 1,000 contracts in less than one minute for acronym DEF. At this time, acronym DEF becomes restricted,[38] and the System will reject all orders (and quotes, if acronym DEF is a Market-Maker), cancel any resting quotes (if acronym DEF is a Market-Maker), and cancel resting orders (if the TPH opted to enable that functionality). The TPH must contact the Exchange to resume trading for acronym DEF.

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[33] As discussed above, orders (or unexecuted portions) that by their terms cancel if they do not execute immediately will be cancelled rather than rest in the book for a period of time (as proposed in this filing) pursuant to the drill through price check parameter is [sic] triggered. Because these orders will not book or route pursuant to the drill through price check parameter, these orders will not be included in the count for the drill through event check.

[34] The Exchange expects the initial time intervals for all these checks to be set at one and five minutes. The time intervals set by the Exchange will apply to all TPHs, who will not be able to change these time intervals.

[35] *See, e.g.,* International Securities Exchange, LLC ("ISE") Rule 714(d) and MIAX Rule 519A.

[36] As noted above, the Exchange intends to initially set intervals of one minute and five minutes, so the TPH would have a separate entry rate for the five-minute interval, which would be measured in the same manner demonstrated by these examples. This is true for each of the rate checks in proposed Rule 6.14(e).

[37] Note the System accepts the tenth order entered, as the check is not triggered until the orders entered exceeds the TPH's designated rate during a one-minute interval.

[38] Note the System executes this third order, as the check is not triggered until the contracts executed exceeds the TPH's designated rate during a one-minute interval.

Example #3—Drill Through Event Rate Check

A TPH designates an allowable drill through event rate of 1 event/1 minute for acronym GHI. The ATD for the class, whose minimum increment is 0.05, is 0.10 (*i.e.*, two minimum increments). The market for the XYZ Dec 50 call is 1.00—1.20, represented by an order for 100 contracts on each side. There are also resting orders to buy 100 at 0.90 and buy 100 at 0.80. The TPH enters a market order to sell 300 contracts for acronym GHI. One hundred contracts from the order execute against the resting order to buy 100 at 1.00 and 100 more contracts from the order execute against the resting order to buy 100 at 0.90. The System cancels the remaining 100 contracts of the order after resting in the book at 0.90 for a period of time (pursuant to the drill through protection, as proposed to be changed). Thirty seconds later, the market for the XYZ Jan 40 call is 2.00–2.20, represented by an order for 100 contracts on each side. There are also resting orders to sell 100 at 2.25, sell 100 at 2.30, and sell 100 at 2.40. The TPH enters a market order to buy 500 contracts for acronym GHI. One hundred contracts from the order execute against the resting order to sell 100 at 2.20, 100 more contracts from the order execute against the resting order to sell 100 at 2.25, and 100 more contracts from the order execute against the resting order to sell 100 at 2.30. One hundred of the remaining contracts executes at 2.30 while resting in the book for a period of time, and the System cancels the remaining 100 contracts (pursuant to the drill through protection, as proposed to be changed). This is the second instance in less than one minute of the remaining portion of an order for acronym GHI being cancelled due to the drill through protection. At this time, acronym GHI becomes restricted, and the System will reject all orders (and quotes, if acronym GHI is a Market-Maker), and cancel any resting quotes (if acronym GHI is a Market-Maker). The TPH must contact the Exchange to resume trading for acronym GHI.

Example #4—Price Reasonability Event Rate Check

A TPH designates an allowable price reasonability event rate of 1 event/1 minute for acronym JKL. The ATD for the class, whose minimum increment is 0.05, is 0.10 (*i.e.*, two minimum increments). The market for the XYZ Dec 50 call is 1.00–1.20. The TPH enters a limit order to sell at 0.85 for acronym JKL. The System rejects the order because it is more than 0.10 below the NBB (pursuant to the limit order price parameter, as proposed to be changed). Thirty seconds later, the market for the XYZ Jan 40 call is 2.00–2.20. The TPH enters a limit order to buy at 2.40 for acronym JKL. The System rejects the order because it is more than 0.10 above the NBO (pursuant to the limit order price parameter, as proposed to be changed). This is the second instance in less than one minute of an order for acronym JKL being rejected due to the limit order price parameter. At this time, acronym JKL becomes restricted, and the System will reject all orders (and quotes, if acronym JKL is a Market-Maker), and cancel any resting quotes (if acronym JKL is a Market-Maker). The TPH must contact the Exchange to resume trading for acronym JKL.

Maximum Contract Size

The proposed rule change adds a maximum contract size risk control. Specifically, proposed Rule 6.14(e) states the System will reject a TPH's incoming order or quote (including both sides of a two-sided quote) if its size exceeds the TPH's designated maximum contract size parameter. Each TPH must provide a maximum contract size for each of simple orders, complex orders, and quotes applicable to an acronym or, if the TPH requests, a login.[39] The Exchange believes the amount of flexibility provided to TPHs by having no maximum for the contract size parameter, as well as by permitting the parameters to be set at the acronym or login level, sufficiently allows TPH to adjust their parameter inputs to these intervals in accordance with their business models and risk management needs. The Exchange believes this proposed risk control will help prevent executions of orders with size that may be potentially erroneous and mitigate risk associated with such executions. This is similar to how other options exchanges have implemented maximum contract size protections, and the Exchange believes this functionality will likewise benefit TPHs.[40]

If a TPH enters an order or quote to replace a resting order or update a resting quote, respectively, and the System rejects the incoming order or quote because it exceeds the applicable maximum contract size, the System will also cancel the resting order or any resting quote in the same series. The Exchange believes it is appropriate to reject or cancel the resting order or quote because, by submitting a replacement order or quote update because it exceeds the TPH's maximum contract size, the TPH is implicitly instructing the Exchange to cancel the resting order or quote, respectively. Thus, even if the system rejects the replacement order or quote update, the TPH's implicit instruction to cancel the resting order or quote remains valid nonetheless. Additionally, with respect to quotes, the Exchange believes it is appropriate to reject or cancel, as applicable, both sides of a quote (whether submitted as a two-sided quote or resting, respectively) because Market-Makers generally submit two-sided quotes, as their trading strategies and risk profiles are based on the spreads of their quotes. Rejecting and cancelling, as applicable, quotes on both sides of the series is consistent with this practice. The Exchange believes cancellation of resting quotes and orders, and rejection of both sides of a two-sided quote, operate as additional safeguards that cause TPHs to re-evaluate orders and quotes before attempting to submit new orders or quotes.

To the extent a TPH submits a pair of orders to the Automated Improvement Mechanism ("AIM"),[41] the Solicitation Auction mechanism ("SAM"),[42] or as a qualified cross-contingent order ("QCC order"),[43] this proposed check will apply to both orders in the pair. If the System rejects either order in the pair, then the system will also cancel the paired order. It is the intent of these paired orders to execute against each other (with respect to AIM and SAM orders) or as a single transaction (with respect to QCC orders). Thus, the Exchange believes it is appropriate to reject both orders if one does not satisfy the maximum contract size check to be consistent with the intent of the submitting TPH. Notwithstanding the foregoing, with respect to A:AIR[44] orders, if the System rejects the agency order pursuant to the maximum contract size check, then the System will also reject the contra-side order. However, if the System rejects the contra-side order pursuant to this check, the System will accept the agency order (assuming it satisfies the check). The purpose of the A:AIR contingency provides the opportunity for the agency order (which is a customer of the submitting TPH) to execute despite not entering an AIM auction pursuant to which the order may execute against a facilitation or solicitation order of the TPH. The Exchange believes the proposed rule change is consistent with that contingency.

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[39] For purposes of determining the contract size of an incoming order or quote, the proposed rule states the contract size of a complex order will equal the contract size of the largest option leg of the order (*i.e.*, if the order is a stock-option order, this check will not apply to the stock leg of the order).

[40] *See, e.g.*, MIAX Rule 519(b).

[41] *See* Rule 6.74A for a description of the AIM auction process.

[42] *See* Rule 6.74B for a description of the SAM auction process.

[43] *See* Rule 6.53(u) for a definition of QCC orders.

[44] *See* Rule 6.74A, Interpretation and Policy .09 for a description of the A:AIR functionality.

Kill Switch

The Exchange proposes to adopt a kill switch in proposed Rule 6.14(f). The kill switch will be an optional tool allowing a TPH to send a message to the System to, or contact the Exchange Help Desk to request that the Exchange, cancel all its resting quotes (if the acronym or login is for a Market-Maker), resting orders (either all orders, orders with time-in-force of day, or orders entered on that trading day), or both for an acronym or login. The System will send a TPH an automated message when the Exchange has processed a kill switch request for any acronym or login.

Once a TPH initiates the kill switch for an acronym or login, the System rejects all subsequent incoming orders and quotes for the acronym or login, as applicable. The System will not accept new orders or quotes from a restricted acronym or login until the Exchange receives the TPH's manual notification (in a form and manner determined by the Exchange, which will be announced by Regulatory Circular) to reactivate its ability to send orders and quotes for the acronym or login. While an acronym or login is restricted, a TPH may continue to interact with any resting orders (*i.e.*, orders not cancelled pursuant to the kill switch) entered prior to its acronym or login becoming restricted, including receiving trade execution reports and canceling resting orders. The proposed kill switch will provide TPHs with a powerful risk management tool for immediate control of their order and quote activity. It will offer TPHs a means to control their exposure through an interface not dependent on the integrity of their own systems, should they experience any type of system failure. This is similar to how other options exchanges have implemented kill switches, and the Exchange believes this functionality will likewise benefit TPHs.[45]

QRM Mechanism

The proposed rule change amends the QRM mechanism in Rule 8.18. QRM is functionality that automatically cancels a Market-Maker's quotes when certain parameter settings are triggered. Specifically, a Market-Maker may establish a (1) maximum number of contracts, (2) a maximum cumulative percentage of the original quoted size of each side of each series, and (3) the maximum number of series for which either side of the quote is fully traded that may trade within a rolling time period in milliseconds also established by the Market-Maker. When these parameters are exceeded within the time interval, the System cancels the Market-Maker's quotes in the class and other classes with the same underlying on the same trading platform. Additionally, Rule 8.18 allows Market-Makers or TPH organizations to specify a maximum number of QRM incidents on an Exchange-wide basis. If the Market-Maker or TPH organization exceeds this number of incidents within a specified time interval, the System will cancel all of the Market-Maker's or TPH organization's quotes and resting orders in all classes and prevent it from sending additional quotes or orders to the Exchange until it reactivates this ability.

This functionality allows Market-Makers to provide liquidity across potentially hundreds of options series without being at risk of executing the full cumulative size of all these quotes before being given adequate opportunity to adjust their quotes. Use of this functionality has been voluntary for Market-Makers under the rules. From a technical perspective, Market-Makers currently do not need to enter any values into the applicable fields, and thus effectively can choose not to use these tools. The Exchange proposes to amend Rule 8.18 to make it mandatory for Market-Makers to enter values for each parameter for all classes in which it enters quotes. The purpose of the proposed rule change is to prevent Market-Makers from inadvertently entering quotes without risk-management parameters. The Exchange notes all Market-Makers currently have settings for these parameters. However, it is possible that a Market-Maker could inadvertently enter quotes without populating one or more of the parameters, resulting in the Market-Maker being exposed to much more risk than it intended. The proposed rule change will prevent this from occurring.

While entering values for the QRM parameters will be mandatory to prevent inadvertent exposure to risk, the Exchange notes Market-Makers who prefer to use their own risk-management systems can enter values that assure the Exchange parameters will not be triggered.[46] Accordingly, the proposed rule change provides Market-Makers with flexibility to use their own risk management tools. The Exchange notes other exchanges make similar functionality mandatory for all Market-Makers.[47]

Order of Application of Risk Controls/ Price Protections

Upon approval of this rule filing, the Exchange will have various risk controls and price protection mechanisms in place applicable to quotes and orders. The following lists the "order" in which the System will apply these controls and mechanisms to incoming quotes and orders:

Incoming Quotes

- Maximum contract size (proposed Rule 6.14(e));
- put/call check (current Rule 6.14(a), as proposed to be amended by this rule filing);
- execution of quotes that lock or cross the NBBO (current Rule 6.14(b)(iii), proposed to be moved to proposed Rule 6.14(c) in this rule filing); and
- quote inverting NBBO (current Rule 6.14(b), as proposed to be amended by this rule filing).

Note QRM may be triggered after a quote executes.

Incoming Simple Limit Orders

- Maximum contract size (proposed Rule 6.14(e));
- put/call check (current Rule 6.14(a), as proposed to be amended by this rule filing)[48]; and
- limit order price parameter (current Rule 6.12(a)(3), as proposed to be amended by this rule filing).

Note the order entry, execution and price parameter rate checks in proposed Rule 6.14(d) and the drill through price check parameter in current Rule 6.13(b)(v) (as proposed to be amended by and moved to proposed Rule

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[45] *See, e.g.*, BOX Options Exchange LLC ("BOX") Rule 7280 and PHLX Rule 1019(b).

[46] For example, a Market-Maker could set the value for the total number of contracts executed in a class at a level exceeding the total number of contracts it actually quotes in the class.

[47] *See, e.g.*, ISE Rule 804(g).

[48] If a limit order is an order marked to cancel and replace a resting limit order, the maximum contract size check applies after the put/call check. Generally, cancel and replace orders do not modify the size of a resting order, which the System would have already determined did not exceed the TPH's maximum contract size parameter. Therefore, the Exchange believed it was reasonable to apply a price reasonability check to these orders first, as that is the order information likely being changed.

6.13(b)(v)(B) in this rule filing) may be triggered after a limit order executes.

Incoming Simple Market Orders

- Maximum contract size (proposed Rule 6.14(e));
- market-width price check parameter (current Rule 6.13(b)(v), as proposed to be amended (nonsubstantively) by this rule filing and moved to proposed Rule 6.13(b)(v)(A)); and
- put/call check (current Rule 6.14(a), as proposed to be amended by this rule filing).[49]

Incoming Complex Orders

- Maximum contract size (proposed Rule 6.14(e));
- limit order price parameter (current Rule 6.12(a)(4) and (5));
- debit/credit check (current Rule 6.53C, Interpretation and Policy .08(c)) or buy-buy (sell-sell) strategy parameter (current Rule 6.53C, Interpretation and Policy .08(d)), as applicable;
- maximum value acceptable price range check (current Rule 6.53C, Interpretation and Policy .08(g));
- market width parameter (current Rule 6.53C, Interpretation and Policy .08(a));
- credit-to-debit parameter (current Rule 6.53C, Interpretation and Policy .08(b));
- percentage distance parameter (current Rule 6.53C, Interpretation and Policy .08(e)); and
- stock-option derived net market parameter (current Rule 6.53C, Interpretation and Policy .08(f)).

Note the order entry, execution and price parameter rate checks in proposed Rule 6.14(d) and the drill through price check parameter in current Rule 6.13(b)(v) (as proposed to be amended by and moved to proposed Rule 6.13(b)(v)(B) in this rule filing) may be triggered after a market order executes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[50] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[51] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[52] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed price protection mechanisms and risk controls will protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering orders and quotes at unintended prices or sizes, and risks associated with orders and quotes trading at prices that are extreme and potentially erroneous, which may likely have resulted from human or operational error.

The Exchange believes amending the limit order price parameter for simple orders (current Rule 6.12(a)(3)) to use the NBBO (rather than the Exchange previous day's closing price or BBO) when available perfects the mechanism of a free and open market and a national market system because it would more accurately reflect the then-current market. Thus, the Exchange believes it would be a better measure to use for purposes of determining the reasonability of the prices of orders and more accurately prevent executions of limit orders at erroneous prices, which ultimately protects investors. Continued use of the Exchange's previous day's closing price or BBO, as applicable, when no NBBO is available or the NBBO is not reliable will still provide continued price protection for orders during those times. The Exchange believes those prices would be the most relevant pricing information to determine the price at which an investor may want to buy or sell within a series, and the Exchange believes it is a reasonable substitute when no NBBO is available. The Exchange believes it is appropriate to have flexibility to determine to apply a different ATD to orders entered during the pre-opening, a trading rotation, or a trading halt to reflect different market conditions during those times. Additionally, the Exchange believes it is appropriate to not apply this price check to orders routed from a PAR workstation or OMT, as those orders were subject to manual handling by a PAR or OMT operator who will have evaluated the price of an order based on then-existing market condition prior to submitted it for electronic execution, thus minimizing risk of an erroneous execution. Additionally, the Exchange believes it is appropriate to not apply the check to orders with a stop contingency, because the prices that trigger execution of orders with a stop condition are intended to be outside the NBBO, and nonapplicability of this check is consistent with that condition. Therefore, the Exchange believes it is unnecessary to apply this check to stop-limit orders. This flexibility and non-applicability, as applicable, will further assist the Exchange with its efforts to maintain a fair and orderly market, which will ultimately protect investors. Application of the drill through check to market and marketable limit orders (and of the market width check only to market orders) is consistent with the current Rule and applicability of those checks; the proposed rule change merely deletes the Exchange's flexibility to apply each check to market orders, marketable limit orders, or both.

The proposed rule change to the drill through price check parameter (current Rule 6.13(b)(v), and proposed Rule 6.13(b)(v)(B)) will benefit investors, as it more clearly describes how the System handles orders that were and were not previously exposed prior to trading at the drill through price. Additionally, the proposed rule change adds functionality to the drill through price check parameter to rest orders (or any remaining unexecuted portions) in the book for a brief time period (not to exceed three seconds) with a price equal to the drill through price promotes just and equitable principles of trade and benefits investors by providing an additional opportunity for execution at a price that does not appear to be erroneous prior to their cancellation while continuing to protect them against execution at erroneous prices. Excluding orders that by their terms cancel if they do not immediately execute from this proposed change is consistent with the terms of those orders. In addition, the proposed rule change to apply the drill through protection to orders eligible for SAL will prevent erroneous executions of more orders, which assists the Exchange in its efforts to maintain a fair and orderly market. The proposed rule change also clarifies an order will HAL at the better of the drill through price [sic] to ensure an order will not be exposed at a price worse than the NBBO (this is consistent with the current HAL rule, which exposes orders at the NBBO).

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[49] The pricing checks always apply after the maximum size check for market orders, because they apply at the time the System determines at what price these orders will execute, unlike limit orders entered with an execution price.

[50] 15 U.S.C. 78f(b).

[51] 15 U.S.C. 78f(b)(5).

[52] *Id.*

The proposed rule change to permit the Exchange to share TPH-designated risk settings with Clearing TPHs that clear transactions on the TPH's behalf (proposed introductory paragraph to Rule 6.14) will permit Clearing TPHs who have a financial interest in the risk settings of TPHs with whom they have entered into a letter of authorization, letter of guarantee, or authorization given by such Clearing TPHs to such TPH to better monitor and manage the potential risks assumed by Clearing TPHs. Because such Clearing TPHs bear the risk associated with Exchange transactions of that TPH, it is appropriate for the Clearing TPHs to have knowledge of what risk settings the TPH may apply within the System. This knowledge will provide Clearing TPHs with greater control and flexibility in managing their own risk tolerance and exposure and aiding Clearing TPHs in complying with the Act. Additionally, to the extent a Clearing TPH might reasonably require a TPH to provide access to its risk settings as a prerequisite to continuing to clear trades on such TPH's behalf, the Exchange's proposed rule change to share those risk settings directly with a Clearing TPH reduces the administrative burden on the TPH and ensures that Clearing TPHs are receiving information that is up to date and conforms to settings active in the System. The Exchange also notes the proposed rule change is consistent with rules of other exchanges.[53]

The proposed rule change to expand the applicability of the put strike price and call underlying value check to market orders (current Rule 6.14(a)) will further assist the Exchange's efforts to maintain a fair and orderly market by mitigating the potential risks associated with additional orders trading at prices that exceed a corresponding benchmark (which may result in executions at prices that are potentially erroneous). The Exchange believes it is appropriate and consistent with the current rule to no longer have flexibility to determine to not apply the call check to orders entered during Extended Trading Hours, as the check currently does not apply during that trading session and does not expect to do so. Similarly, the Exchange believes it promotes fair and orderly markets to not apply these checks to market orders executed during an opening rotation to avoid impacting the determination of the opening price (the Exchange notes separate price protections apply to orders during the opening process).

The proposed rule change to the quote inverting NBBO check (current Rule 6.14(b)) benefits investors by clarifying the System does not apply those checks to orders entered when there is no NBBO (or BBO with respect to the quote inverting NBBO check) available, as there is no reliable benchmark during those times against which the System can compare quote prices. This will remove impediments to and perfect the mechanism of a free and open market because these checks would not apply to quotes during times when there is no reliable price benchmark, and thus the check would not erroneously reject otherwise acceptable quotes, which may be disruptive to Market-Makers that provide necessary liquidity to the Exchange. The proposed rule change to delete the Exchange's flexibility regarding when to apply the quote inverting NBBO check and instead state in the Rules it will not apply prior to a series opening if the series is not open on another exchange, and it will not apply during a trading halt is appropriate and consistent with the current rule. The Exchange currently does not apply the check to quotes entered during a halt and does not expect to do so. With respect to quotes entered in series prior to the opening, the Exchange believes it is appropriate to not apply the check if a series is not yet open on another exchange to avoid rejecting quotes that may be consistent with market pricing not yet available in the System.

The proposed changes to the execution of quotes that lock or cross the NBBO (current Rule 6.14(b)(iii) and proposed Rule 6.14(c)) to reject incoming quotes when a Market-Maker quote represents the BBO (and the Exchange has established a counting period pursuant to its quote lock functionality), which is also the NBBO (along with an away exchange), is consistent with the Options Linkage Plan and related rules, as it will prevent dissemination of a quote that locks or crosses an away market. The proposed rule change to allow the Exchange not to apply the execution of quotes that lock or cross the NBBO check in the interest of maintaining a fair and orderly market will allow the Exchange to disable this check in response to a market event or market volatility to avoid inadvertently cancelling quotes not erroneously priced but rather priced to reflect potentially rapidly changing prices, which will assist with the maintenance of a fair and orderly market.

The Exchange believes the proposed order entry, execution and price parameter rate checks (proposed Rule 6.14(d)) will assist with the maintenance of a fair and orderly market by establishing new activity based risk protections for orders. The Exchange currently offers QRM, a risk protection mechanism for Market-Maker quotes, which the Exchange believes has been successful in reducing Market-Maker risk, and now proposes to adopt risk protections for orders that would allow other TPHs to similarly manage their exposure to excessive risk. In particular, the proposed rule change implements four new risk protections based on order entry and execution rates as well as rates of orders that trigger the drill through or price reasonability parameters. The Exchange believes these new protections would enable TPHs to better manage their risk when trading on the Exchange by limiting their risk exposure when systems or other issues result in orders being entered or executed, as well as executed at extreme prices, at rates that exceed predefined thresholds. In today's market, the Exchange believes robust risk management is becoming increasingly more important for all TPHs. The proposed rule change would provide an additional layer or risk protection for TPHs. In particular, these rate checks are designed to reduce risk associated with system errors or market events that may cause TPHs to send a large number of orders, receive multiple, automatic executions, or execute a large number of orders at extreme and potentially erroneous prices, before they can adjust their exposure in the market. The proposed order entry and execution rate checks are similar to risk management functionality provided by other options exchanges.[54] While the order entry and contracts executed rate checks apply to all TPHs, it is optional for TPHs to have resting orders (or certain subcategories of resting orders) cancelled when a rate check is triggered and an acronym or login becomes restricted.

The proposed maximum contract size risk control (proposed Rule 6.14(e)) is designed to help TPHs avoid potential submission of erroneously sized orders on the Exchange. Similar to functionality intended to protect against orders and quotes executing at unintended prices, this proposed functionality will assist in the maintenance of a fair and orderly market and protect investors by rejecting orders and quotes that are "too large" to prevent executions at unintended sizes and mitigate risks associated with such executions that are potentially erroneous. The Exchange believes the additional risk control feature to reject or cancel the resting or quote when an incoming replacement order or quote update is rejected pursuant to this proposed risk control is appropriate because, by submitting a replacement order or quote update, the TPH is implicitly instructing the Exchange to cancel the resting order or quote, respectively. Additionally, the Exchange believes it is appropriate to reject or cancel, as applicable, both sides of a quote because Market-Makers generally submit two-sided quotes, as their trading strategies and risk profiles are based on spreads of their quotes, and rejecting and cancelling, as applicable, both sides of a quote is consistent with this practice. The Exchange believes cancellation of resting quotes and orders, and rejection of both sides of a quote, operate as additional safeguards that cause TPHs to re-evaluate orders and quotes before attempting to submit new orders or quotes. This will further protect against erroneous trades, which protects investors. The Exchange also believes the proposed rule change regarding how the proposed check will apply to AIM, SAM and QCC orders is reasonable, as the proposed rule change is consistent with the contingencies attached to those types of orders.

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[53] *See, e.g.,* MIAX Rule 500; BX Chapter VI, Section 20; NYSE Arca Rule 6.2A(a); NYSE MKT Rule 902.1NY(a); and PHLX Rule 1016.

[54] *See, e.g.,* ISE Rule 714(d) and MIAX Rule 519A.

With respect to the proposed order entry, execution and price parameter rate checks and maximum contract size check (as well as the existing QRM functionality), the Exchange believes it is appropriate to not have minimum or maximum values, or default values, for the parameters, to provide sufficient flexibility to TPHs to adjust their parameter inputs in accordance with their business and risk management needs. The Exchange believes price protection mechanisms benefits its market and the options industry as a whole, however, ultimately these mechanisms primarily protect TPHs against erroneous executions of their orders and quotes. CBOE appreciates the parameter settings determine whether these protections will be meaningful. Based on discussions with TPHs regarding its current and proposed package of risk controls and price protection mechanisms, the Exchange understands TPHs support the implementation of price protection mechanisms such as these and expects TPHs to input settings that are meaningful so they can take full advantage of the benefits these mechanisms are intended to provide.

The proposed kill switch (proposed Rule 6.14(f)) is an optional tool offered to all TPHs. The Exchange represents the proposed kill switch will operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and the functionality is not mandatory. Specifically, any interest executable against a TPH's quotes and orders received by the Exchange prior to the time the kill switch is processed by the Exchange will automatically execute at the price up to the TPH's size. The kill switch message will be accepted by the System in the order of receipt in the queue and will be processed in that order so that interest already in the System will be processed prior to the kill switch message. A Market-Maker's utilization of the kill switch, and subsequent removal of its quotes, does not diminish or relieve the Market-Maker of its obligation to provide continuous two-sided quotes. Market-Makers will continue to be required to provide continuous two-sided quotes on a daily basis, and a Market-Maker's utilization of the kill switch will not prohibit the Exchange from taking disciplinary action against the Market-Maker for failing to meet the continuing quoting obligation each trading day. All TPHs may determine whether a kill switch cancels resting quotes, resting orders (or certain subcategories of resting orders), or both. The Exchange also notes the proposed rule change is consistent with rules of other exchanges.[55]

The Exchange believes requiring Market-Makers to enter values into the risk parameters of the QRM mechanism (current Rule 8.18) will not be unreasonably burdensome, as all Market-Makers currently utilize the functionality. Additionally, the proposed rule change will assist Market-Makers in reducing their risk of inadvertently entering quotes without populating the risk parameters. Reducing this risk will enable Market-Makers to enter quotations with larger size, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

While entering values for the QRM parameters will be mandatory to prevent inadvertent exposure to risk, the Exchange notes Market-Makers who prefer to use their own risk-management systems can enter values that assure the Exchange parameters will not be triggered. Accordingly, the proposed rule change provides Market-Makers with flexibility to use their own risk management tools. The Exchange notes other exchanges make similar functionality mandatory for all Market-Makers.[56]

The individual firm benefits of enhanced risk protections flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes these risk protections will allow TPHs to enter orders and quotes with reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased liquidity for the execution of their orders, thereby protecting investors and the public interest. Without adequate risk management tools, such as those proposed in this filing, TPHs could reduce the amount of order flow and liquidity they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed rule change is designed to encourage TPHs to submit additional order flow and liquidity to the Exchange, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest. In addition, providing TPHs with more tools for managing risk will facilitate transactions in securities because, as noted above, TPHs will have more confidence protections are in place that reduce the risks from potential system errors and market events. As a result, the new functionality as the potential to promote just and equitable principles of trade.

The Exchange notes TPHs must be mindful of their obligations to seek best execution of orders handled on an agency basis. Decisions to use the optional functionality described in this filing (*i.e.*, cancellation of orders when an acronym or log-in becomes restricted after exceeding the orders entered or contracts executed rate, cancellation of orders upon initiation of a kill switch), and decisions on values of parameters (*i.e.*, parameters for the orders entered, contracts executed and price parameter rate check, maximum contract size check), must be made consistent with this duty.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change adds price protection mechanisms and risk controls for orders and quotes of all Trading Permit Holders submitted to CBOE to help further prevent potentially erroneous executions, which benefits all market participants. These mechanisms and controls apply to orders of all TPHs, and quotes of all Market-Makers, in the same manner. The proposed rule changes related to the quote inverting NBBO check, the execution of quotes that lock or cross the NBBO check, and QRM apply only to Market-Makers because only Market-Makers may submit quotes under the Rules, and because similar protections applicable to orders are in place or also proposed in this rule filing. Additionally, the Exchange believes these types of protection for Market-Makers are appropriate given their unique role in the market and may encourage Market-Makers to quote tighter and deeper markets, which will increase liquidity and enhance competition, given the additional protection these price checks will provide. The Exchange believes the proposed rule change would provide market participants with additional protection from risks related to erroneous executions. Certain of the proposed protections are similar to those available on other exchanges.[57]

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[55] *See, e.g.*, BOX Rule 7280 (b) and PHLX Rule 1019(b).

[56] *See, e.g.*, ISE Rule 804(g).

While the proposed rule change makes entry of parameters into the QRM mechanism mandatory, the Exchange notes all Market-Makers currently avail themselves of this mechanism today. Additionally, the Exchange believes the use of QRM will prevent the inadvertent entry of quotes without risk-management parameters. Market-Makers who prefer to use their own risk-management systems can enter out-of-range values so the Exchange-provided parameters will not be triggered and can function as back-up protection. While entering values for the QRM parameters will be mandatory to prevent inadvertent exposure to risk, the Exchange notes Market-Makers who prefer to use their own risk-management systems can enter values that assure the Exchange parameters will not be triggered. Accordingly, the proposed rule change provides Market-Makers with flexibility to use their own risk management tools. The Exchange notes other exchanges make similar functionality mandatory for all Market-Makers.[58]

With respect to the proposed kill switch functionality, all TPHs may avail themselves of the kill switch, which functionality is optional. The proposed rule change is intended to protect TPHs in the event they experience a systems issue or unusual or unexpected market activity that would require them to withdraw from the market to protect investors. The ability to control risk at either the acronym or login level will permit a TPH to protect itself from inadvertent exposure to excessive risk at each level. Reducing such risk will enable TPHs to enter quotes and orders with protection against inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they may receive better prices and because it may lower volatility in the options market. Additionally, the proposed kill switch functionality is similar to that available on other exchanges.[59]

The proposed rule change to permit the Exchange to share TPH-designated risk settings with Clearing TPHs that clear transaction on behalf of the TPH is not designed to address any competitive issues and does not pose any undue burden on non-Clearing TPHs because, unlike Clearing TPHs, non-Clearing TPHs do not guarantee the execution of transactions on the Exchange. The proposed rule change applies the same to all TPHs and Clearing TPHs. Any TPH that does not wish to have the Exchange share designated risk settings with its Clearing TPHs could avoid this by becoming a clearing member of the Clearing Corporation. The Exchange notes other exchanges' rules permit sharing of these settings with clearing members.[60]

The individual firm benefits of enhanced risk protections flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes these risk protections will allow TPHs to enter orders and quotes with reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased liquidity for the execution of their orders. Without adequate risk management tools, such as those proposed in this filing, TPHs could reduce the amount of order flow and liquidity they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed rule change is designed to encourage TPHs to submit additional order flow and liquidity to the Exchange, which may ultimately promote competition. In addition, providing TPHs with more tools for managing risk will facilitate transactions in securities because, as noted above, TPHs will have more confidence protections are in place that reduce the risks from potential system errors and market events.

Based on discussions with TPHs regarding its current and proposed package of risk controls and price protection mechanisms, the Exchange understands TPHs support the implementation of price protection mechanisms such as these and expects TPHs to input settings that are meaningful so they can take full advantage of the benefits these mechanisms are intended to provide.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

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[57] *See, e.g.,* ISE Rule 714(d) and MIAX Rule 519A (order entry and execution rate checks); and MIAX Rule 519(b) (order contract size).

[58] *See, e.g.,* ISE Rule 804(g).

[59] *See, e.g.,* BOX Rule 7280(b) and PHLX Rule 1019(b).

[60] *See, e.g.,* MIAX Rule 500; BOX Chapter VI, Section 20; NYSE Arca Rule 6.2A(a); NYSE MKT Rule 901.1NY(a); and PHLX Rule 1016 (sharing TPH-designated risk settings).

- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–053, and should be submitted on or before October 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22538 Filed 9–19–16; 8:45 am]

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[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32262; 812–14549]

Global X Funds, et al.; Notice of Application

September 14, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) series of certain open-end management investment companies that track the performance of an index provided by an affiliated person to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of a fund to deposit securities into, and receive securities from, the fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the funds ("Funds of Funds") to acquire Shares.

APPLICANTS: Global X Funds (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, Global X Management Company LLC (the "Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and SEI Investments Distribution Company (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on September 18, 2015, and amended on June 3, 2016 and August 31, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 11, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Global X Funds and Global X Management Company LLC, 600 Lexington Avenue, 20th Floor, New York, NY 10022; SEI Investments Distribution Company, 1 Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel at (202) 551–6990, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow funds to operate as index exchange traded funds ("ETFs") and for which an Affiliated Person (as defined below) will serve as the index provider (each a "Self-Indexing Fund").[1] The Self-Indexing Fund Shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant

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[1] Applicants request that the order apply to any series of the Trust and any other open-end management investment companies or series thereof (each, included in the term "Self-Indexing Funds"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Self-Indexing Fund will (a) be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser (included in the term "Adviser") and (b) comply with the terms and conditions of the application.

agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Self-Indexing Fund will hold investment positions selected to correspond to the performance of an Underlying Index. An affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of a Trust or a Self-Indexing Fund, of the Adviser, of any sub-adviser to or promoter of a Self-Indexing Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Self-Indexing Fund's portfolio (including cash positions) except as specified in the application.

4. Because Shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Self-Indexing Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in Shares does not involve a Self-Indexing Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent Shares from trading at a material discount or premium from NAV.

6. With respect to Self-Indexing Funds that effect creations and redemptions of Creation Units in-kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Self-Indexing Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Shares of the Self-Indexing Funds beyond the limits of section 12(d)(1)(A) of the Act; and the Self-Indexing Funds, and any principal underwriter for the Self-Indexing Funds, and/or any broker or dealer registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Self-Indexing Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Self-Indexing Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Self-Indexing Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Self-Indexing Fund to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Self-Indexing Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Self-Indexing Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22542 Filed 9–19–16; 8:45 am]

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[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Self-Indexing Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Self-Indexing Funds.

[3] The requested relief would apply to direct sales of Shares in Creation Units by a Self-Indexing Fund to a Fund of Funds and redemptions of those Shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Self-Indexing Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78834; File No. SR–OCC–2016–802]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning the Options Clearing Corporation's Escrow Deposit Program

September 14, 2016.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010[1] ("Payment, Clearing and Settlement Supervision Act") and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934,[2] notice is hereby given that on August 15, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the advance notice as described in Items I, II and III below, which Items have been primarily prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in connection with changes that would improve the resiliency of OCC's escrow deposit program. Such changes are designed to: (1) Increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) strengthen clearing member's rights to collateral in the escrow deposit program in the event of a customer default to the clearing member; (3) provide more specificity concerning the manner in which OCC or clearing members would take possession of collateral in OCC's escrow deposit program; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Communications With Custodian Banks

In light of the substantial changes proposed to the escrow deposit program, OCC has sought to keep custodian banks informed regarding the proposed changes. These communications began in January and February 2012, when OCC notified each custodian bank of the proposal to restructure the escrow deposit program. As part of this notification, OCC informed each custodian bank of (1) OCC's intention to require that security pledges be made through the Depository Trust Company ("DTC"), (2) the percentage of cash used in the escrow deposit program and (3) the potential elimination of cash deposits.[3]

In June through August 2012, OCC provided a PowerPoint presentation to each custodian bank summarizing proposed changes to the escrow deposit program. This presentation included an explanation of the reasons for the proposed changes, including the desire to enhance and strengthen the escrow deposit program and increase collateral transparency. The presentation also included a discussion of changes to the validation and valuation of collateral, and the calculation of contract quantities based on the collateral that has been pledged.

In April and May 2013, OCC provided each custodian bank with an operational overview of the restructured escrow deposit program in the form of a PowerPoint presentation. This presentation covered: eligible option types, types of eligible supporting collateral, required collateral value calculations for option contact coverage, valuation of supporting collateral, asset management locations/processing of supporting collateral, and validation and valuation of supporting collateral and calculation of option contract coverage.

In July and August 2013, OCC distributed a draft Participating Escrow Bank Agreement (as described below) and the related proposed OCC Rules to custodian banks along with a request for feedback. Following the receipt of questions and comments, OCC distributed "FAQ" responses to custodian banks.

During September 2013, OCC provided a walkthrough of the functions of its ENCORE[4] system applicable to the enhanced escrow deposit program for custodian banks in order to provide an orientation of such functionality. In connection with the restructured escrow deposit program, clearing members will continue to use ENCORE to view member specific deposits, and custodian banks will use ENCORE to view third-party specific deposits and make escrow deposits consisting of cash. Moreover, OCC sent requests to custodian banks for validation of the DTC pledgor accounts to be used for the restructured escrow deposit program. In October 2013, OCC distributed escrow deposit program eligible securities file details to custodian banks.

In February and March 2014, OCC arranged a series of calls with custodian banks to solicit feedback on a term sheet detailing cash account structures. Following the receipt of questions and comments, OCC distributed "FAQ" responses to custodian banks.

Comments Received From Custodian Banks

As described above, OCC discussed the proposed changes to its escrow deposit program with custodian banks several times since 2012. While these discussions were generally informational in nature, custodian banks provided OCC with comments and questions in two instances: the July/August 2013 discussions and the February/March 2014 discussion. The primary focus of the comments in both sets of discussions was the manner in which custodian banks would be required to hold cash under the new escrow rules: in an omnibus structure or in a tri-party structure. The omnibus structure would provide OCC with an account in OCC's name and thereby perfect OCC's right under the Uniform Commercial Code ("UCC") to take possession of cash escrow deposits in the event of a clearing member default. This would also eliminate the need for a separate tri-party agreement. However, the omnibus structure was less desirable to custodian banks since all of a custodian bank's OCC escrow deposit program clients' assets would be comingled in a single account. From an operational perspective, a single omnibus account at a custodian bank is easier for OCC to manage since OCC would only need to have "view access" into one account at a custodian bank. On the other hand, custodian banks expressed privacy concerns with respect to several clients having view access into a single account. Eventually, OCC decided to use a tri-party account structure for cash escrow deposits, with certain controls to alleviate the concerns on both sides. Specifically, custodian banks agreed to facilitate the execution of a form tri-party agreement with each of its clients that participates in OCC's escrow deposit program, which perfects OCC's security interest in cash escrow deposits. Additionally, custodian banks agreed to establish an escrow specific cash account for each client so that OCC does not need to differentiate a client's OCC escrow cash from the client's non-escrow cash. OCC believes that the proposed structure for cash accounts strikes the appropriate balance between OCC's desire for legal certainty as to its right to take possession of cash escrow deposits in the event of a clearing member default, and the operational desire to only have view access to a client's OCC escrow deposit program cash account balance at a custodian bank.

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b-4(n)(1)(i).

[3] While it was ultimately determined in April 2014 that cash collateral would remain in the escrow deposit program, prior discussions with participating escrow banks reflected the evolution of OCC's decision on this point. For example, the PowerPoint presentation given to banks during June—August 2012 indicated that cash collateral would not be permitted in the escrow deposit program, while the PowerPoint presentation given during April—May 2013, as well as the draft rules distributed to participating escrow banks for comment in July—August 2013, indicated that it *would* be included. A number of current participants in the escrow deposit program use cash, some to a substantial degree, and OCC determined that the use of cash collateral should remain an essential aspect of the escrow deposit program.

[4] ENCORE is OCC's real-time clearing and settlement system that allows clearing members to, among other things, post and view margin collateral as well as deposits in lieu of margin.

Additional comments OCC received from the July/August 2013 discussions with custodian banks centered on administrative items such as the escrow deposit program documentation structure and the manner in which custodian banks would post escrow deposits in OCC's clearing system, ENCORE. As discussed below, OCC moved the substantial majority of its Amended and Restated On-Line Escrow Deposit Agreement into proposed Rule 610C in order to have the majority of escrow rules in one place. Custodian banks did not express any concerns regarding the operational steps necessary to post an escrow deposit in ENCORE once OCC provided custodian banks with a "walkthrough" of the operational process.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of Change

The purpose of this proposed change is to improve the resiliency of OCC's escrow deposit program. The changes would: (1) increase OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) provide more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; (3) clarify clearing members' rights to collateral in the escrow deposit program in the event of a customer default to the clearing member; and (4) improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook. Upon implementation of the proposed change, all securities collateral in OCC's escrow deposit program would be held at DTC, and custodian banks would only be allowed to hold cash collateral.

The narrative below is comprised of four sections. The first section provides a background of OCC's current escrow deposit program as well as an overview of the proposed changes to the rules and agreements that govern the escrow deposit program. The second section discusses the changes associated with: (1) Increasing OCC's visibility into and control over collateral deposits made under the escrow deposit program; (2) Providing more specificity concerning the manner in which OCC would take possession of collateral in OCC's escrow deposit program in the event of a clearing member or custodian bank default; and, (3) Clarifying clearing member's rights to collateral in the escrow deposit program in the event of a customer default to the clearing member as well as providing additional detail concerning the manner in which clearing members may take possession of such collateral. The third section discusses proposed technical and conforming changes to the rules and agreements governing the current escrow deposit program that would allow OCC to consolidate all such terms into a single location in OCC's Rulebook. The second and third sections also discuss changes that improve the readability of the rules governing OCC's escrow deposit program, which is primarily achieved by consolidating all such rules into a single location in OCC's Rulebook. The fourth section discusses the manner in which OCC proposes to transition from the current escrow deposit program to the new escrow deposit program, including the removal of certain rules and contractual provisions that would no longer be applicable to the new escrow deposit program.

Section 1: Background and Overview of Proposed Changes

Background/Current Escrow Deposit Program

Each day OCC collects collateral from its clearing members in order to protect OCC and the markets it serves from potential losses stemming from a clearing member default. Approximately half of the collateral deposited by clearing members at OCC is deposited through OCC's escrow deposit program. Users of OCC's escrow deposit program are customers of clearing members who, through the escrow deposit program, are permitted to collateralize eligible positions directly with OCC (instead of with the relevant clearing member who would, in turn, deposit margin at OCC). Currently, collateral deposits made through OCC's escrow deposit program are characterized as either "specific deposits" or "escrow deposits." Specific deposits are deposits of the security underlying a given options positions and are made through the DTC by a clearing member on behalf of its customer (at the direction of the customer).[5] Escrow deposits are deposits of cash or securities made by a custodian bank on behalf of a customer of an OCC clearing member in support of an eligible options position. OCC's Rules currently contemplate two forms of escrow deposits: "third-party escrow deposits" and "escrow program deposits." Third-party escrow deposits are substantially similar to specific deposits except for the fact that third-party escrow deposits are made by a custodian bank, and not a clearing member. Third-party escrow deposits consist entirely of securities and, like specific deposits, are made through DTC. In order to effect third-party specific deposits, custodian banks must be DTC members. Escrow program deposits are bank deposits of eligible securities or cash, which are held at the custodian bank (versus third-party escrow deposits and specific deposits, which are held at DTC).

When a customer of a clearing member makes a deposit in lieu of margin through OCC's escrow deposit program, the relevant positions are excluded from the clearing member's margin requirement at OCC. The escrow deposit program therefore provides users of OCC's services with a means to more efficiently use cash or securities they may have available.

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[5] For example, if customer XYZ holds a short position of options on AAPL, customer XYZ could, through its clearing member's DTC account, pledge shares of AAPL to OCC in order to collateralize such options position and not be charged margin by OCC.

Overview of Rule Changes (Including Terminology Changes) and New Agreements

Rule Consolidation and Terminology Changes

Currently, the rules concerning OCC's escrow deposit program are located in OCC Rules 503, 610, 613 and 1801. Additionally, OCC and custodian banks participating in OCC's escrow deposit program enter into an Escrow Deposit Agreement ("EDA"), which also contains substantive provisions governing the program. OCC is proposing to consolidate all of the rules concerning the escrow deposit program, including the provisions of the EDA relevant to the revised escrow deposit program, into proposed Rules 610, 610A, 610B and 610C.[6] OCC believes that consolidating the many rules governing the escrow deposit program into a single location would significantly enhance the understandability and transparency of the rules concerning the escrow deposit program for current users of the program as well as any persons that may be interested in using the program in the future.

In connection with the above described rule consolidation, OCC is also proposing to rename the types of escrow deposits available within the escrow deposit program, as well as rename the term "approved depository" to "approved custodian." Specific deposits would now be called "member specific deposits," which are equity securities deposited by clearing members at DTC at the direction of their customers; third-party escrow deposits would now be called "third-party specific deposits," which are equity securities deposited by custodian banks at DTC at the direction of their customers; and, escrow program deposits would now be called, "escrow deposits," which are either cash deposits held at a custodian bank for the benefit of OCC, or Government securities deposited at DTC by custodian banks at the direction of their customers. The term "approved depository" would also be changed to "approved custodian" to eliminate any potential confusion with the term "Depository," which is defined in the Rules, to mean DTC.

New Rule Organization

With respect to the rules governing the escrow deposit program, proposed Rule 610 would set forth general terms and conditions common to all types of deposits permitted under the escrow deposit program. Specifically, proposed Rule 610: (1) Sets forth the different types of eligible positions for which a deposit in lieu of margin may be used, (2) sets forth operational aspects of the escrow deposit program such as the days and the times during which a deposit in lieu of margin may be made and where the different types of deposits in lieu of margin must be maintained (either DTC or a custodian bank), (3) provides the conditions under which OCC may take possession of a deposit in lieu of margin (from DTC or a custodian bank), and (4) describes OCC's security interest in deposits in lieu of margin.[7] Proposed Rule 610 is supplemented by: (1) Proposed Rule 610A for member specific deposits, (2) proposed Rule 610B for third-party specific deposits, and (3) proposed Rule 610C for escrow deposits. Proposed Rules 610A, 610B and 610C provide further guidance and specificity on the topics initially addressed in proposed Rule 610 (and delineated above) as they relate to member specific deposits, third-party specific deposits and escrow deposits, respectively.

The new rule structure differs from the existing rule structure in that existing Rules 503, 610, 613 and 1801 discuss topics concerning deposits in lieu of margin (such as withdrawal, roll-over[8] and release) in general terms and without regard to the type of deposit in lieu of margin. The existing rule structure also does not provide operational details of the escrow deposit program. The new rule structure discusses each aspect of OCC's escrow deposit program by type of deposit in lieu of margin (member specific deposits, third-party specific deposit or escrow deposits) as well as provides operational details concerning the program. OCC believes that the more detailed presentation of the new rules concerning the escrow deposit program enhances the understandability of the program to all users, and potential users, of the program because all such persons will be able to better understand how topics apply by type of deposit in lieu of margin and with regard to the operational differences between each type of deposit in lieu of margin.

Agreements Concerning the Escrow Deposit Program

In addition to the above-described Rule changes, many provisions of the EDA would be moved in to the Rules. Accordingly, OCC is proposing to eliminate the EDA and replace it with a simplified agreement entitled the "Participating Escrow Bank Agreement."[9] The Participating Escrow Bank Agreement would provide that custodian banks are subject to all terms of the Rules governing the revised escrow deposit program,[10] as they may be amended from time to time.[11] The Participating Escrow Bank Agreement would contain eligibility requirements for custodian banks, including representations regarding the custodian bank's Tier 1 Capital,[12] and provide

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[6] As described herein, OCC is proposing to eliminate the EDA based on such consolidation. When appropriate, and as described in more detail below, conforming changes were made to certain Rules as a result of OCC proposing to require that all non-cash deposits in the escrow deposit program be made through DTC (and not held at custodian banks).

[7] OCC would continue to maintain a perfected security interest in deposits in the escrow deposit program under the proposed Rules notwithstanding changes to the location of the rules that perfect such security interest. OCC's security interest in securities deposits in the escrow deposit program, which are held at DTC, is perfected by operation of DTC's rules. OCC's security interest in cash deposits in the escrow deposit program is perfected under proposed Rules 610C(i), 610C(j) and 610C(k), which replace Sections 3.3, 3.4, 4.3, 4.4, 5.3, 5.4 and 21 of the EDA. Proposed Rule 610(g) also concerns OCC's security interest in deposits in escrow deposit program.

[8] A "roll-over" occurs when a customer chooses to maintain an existing escrow deposit after the options supported by the escrow deposit expires, or are closed-out, and the customer re-allocates the escrow deposit to a new options position.

[9] The Participating Escrow Bank Agreement is attached to this filing as Exhibit 5A, with changes from the EDA marked. Custodian banks participating in the revised escrow deposit program are defined as "Participating Escrow Banks" in the Participating Escrow Bank Agreement, and such banks must also be an Approved Custodian pursuant to proposed Section 1.A(13) of OCC's By-Laws. In addition, and as described above, certain provisions of the EDA are proposed to be incorporated into OCC's Rules; however, no rights or obligations of either OCC or a custodian bank would change solely as a result of such an incorporation.

[10] The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

[11] Under the Participating Escrow Bank Agreement, however, OCC will agree to provide custodian banks with advance notice of material amendments to the Rules relating to deposits in lieu of margin and custodian banks will have the opportunity to withdraw from the escrow deposit program if they object to the amendments. As a general matter, the Participating Escrow Bank Agreement will not be negotiable, although OCC may determine to vary certain non-material terms in limited circumstances.

[12] OCC recently enhanced the measurement it uses—Tier 1 Capital instead of shareholders' equity—to establish minimum capital requirements for banks approved to issue letters of credit that may be deposited by clearing members as a form of margin asset. *See* Securities Exchange Act

OCC with express representations concerning the bank's authority to enter into the Participating Escrow Bank Agreement.[13] Moreover, standard contractual provisions concerning topics such as assignment, governing law and limitation of liability have been enhanced in the Participating Escrow Bank Agreement when compared to the EDA.[14] OCC is also proposing to move notification requirements into proposed Rule 610C(l), which is an enhancement of Section 7 of the EDA that requires custodian banks to provide notice to OCC only when there are changes to the "authorized persons" and changes to the address of the bank. Proposed Rule 610C(l) would require escrow banks to provide OCC with notices of material changes to the bank (in additional to items such as changes of authorized persons and the address of bank, as currently required under Section 7 of the EDA).

OCC, under Proposed Rule 610C(b), would also require customers wishing to deposit cash collateral and custodian banks holding escrow deposits comprised of cash to enter into a tri-party agreement involving OCC, the customer and the applicable custodian bank ("Tri-Party Agreement," attached hereto as Exhibit 5B). The Tri-Party Agreement governs the customer's use of cash in the program, confirms the grant of a security interest in the customer's account to OCC and the relevant clearing member, as set forth in proposed Rule 610C(f), and causes customers of clearing members to be subject to all terms of the Rules governing the revised escrow deposit program.[15] Each custodian bank entering into the Tri-Party Agreement ("Tri-Party Custodian Bank"), would agree to follow the directions of OCC with respect to cash escrow deposits without further consent by the customer.[16] As discussed in greater detail below, use of the Tri-Party Agreement significantly enhances OCC's rights concerning cash escrow deposits, and provides OCC with greater certainty regarding its rights to cash escrow deposits in the event of a customer or clearing member default.

Section 2: Transparency and Controls, Taking Possession of Collateral, and Clearing Member Rights to Collateral

Transparency and Control Over Collateral Included in Escrow Deposits

Currently, securities deposits in the escrow deposit program are held at either DTC or a custodian bank, and cash deposits in the escrow deposit program are held at a custodian bank. In the case of either cash or securities held at a custodian bank, OCC relies on the custodian bank to verify the value and control of collateral since OCC does not have any visibility into relevant accounts. OCC is proposing to require that all securities deposited within the escrow deposit program, regardless of the type of deposit, be held at DTC.[17] Additionally, OCC is proposing to require Tri-Party Custodian Bank to provide OCC with view access into the account in which the deposit is held.

Holding securities escrow deposit program collateral at DTC would provide OCC with increased visibility into the collateral within the escrow deposit program because OCC would be able to use its existing interfaces with DTC to view, validate and value collateral within the escrow deposit program in real time, allowing OCC to perform the controls for which it currently relies on the custodian banks. It would also provide OCC with the ability to obtain possession of deposited securities upon a clearing member default by issuing a demand of collateral instruction through DTC's systems, without the need for custodian bank involvement. Furthermore, a clearing member would have the ability to obtain possession of deposited securities upon a customer default in a similar manner by notifying OCC of such customer default and submitting a request for delivery of such deposited securities (OCC's and clearing members' ability to take possession of a deposit within the escrow deposit program is discussed in greater detail below). OCC does not believe that requiring use of DTC to deposit securities escrow collateral presents a material change for users of OCC's escrow deposit program because such users currently use DTC to effect certain types of deposits in lieu of margin under the current escrow deposit program.[18]

Cash collateral pledged to support an escrow deposit would continue to be facilitated through the existing program interfaces; however, for increased security, any pledges of cash would be required to be made in a customer's account at the Tri-Party Custodian Bank that is used solely for the purpose of making escrow deposits. As described above, under the proposed changes OCC would require Tri-Party Custodian Bank and customers to enter into a Tri-Party Agreement in order to provide legal certainty concerning this arrangement. Further, and as set forth in the Tri-Party Agreement, each Tri-Party Custodian Bank would agree to disburse funds from the pledged account only at OCC's direction. From an operational perspective, each Tri-Party Custodian Bank would provide OCC with online view access to each customer's cash account designated for the escrow deposit program, allowing visibility into transactional activity and account balances. OCC would not process a cash escrow deposit in its systems until it sees the appropriate amount of cash deposited in the designated bank account at the Tri-Party Custodian Bank. This process ensures that OCC does not rely on a third party to value, or warrant the existence of, collateral within the escrow deposit program. The Tri-Party Agreement, in connection with the new cash collateral structure, would provide OCC with additional transparency and control over cash collateral under the revised escrow deposit program.

In order to effect the foregoing, OCC is proposing to adopt proposed Rules 610A(a), 610B(a), 610C(b) and 610C(c). Proposed Rules 610A(a) and 610B(a), Effecting a Member Specific Deposit and Effecting a Third-Party Specific Deposit,

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Release No. 74894 (May 7, 2015), 80 FR 27431 (May 13, 2015) (SR–OCC–2015–007). For the reasons set forth in SR–OCC–2015–007, OCC is proposing to adopt the same standard with respect to custodian bank escrow deposits.

[13] These provisions include, but are not limited to, Sections 1.1 and 1.2 of the EDA.

[14] Sections 2.1, 2.2, 3.5, 3.6, 3.8, 4.7, and 5.6, 6 and 7 of the EDA would be removed entirely since they are no longer needed under OCC's revised escrow deposit program. These provisions concern a custodian bank's movement of securities escrow collateral; such collateral would be deposited at DTC under the revised escrow deposit program (as described below). Section 2.3 of the EDA would also be removed in its entirety because escrow deposits would not be permitted for equity calls in the revised escrow deposit program. Additionally, the concept of cash settlements concerning escrow deposits would not be included in the revised escrow deposit program and, as a result, Sections 15, 16, 17 and 18(b) to 18(d) would be removed in their entirety.

[15] The Rules governing the revised escrow deposit program are proposed Rules 610, 610A, 610B and 610C.

[16] OCC has determined to use this cash account structure as a result of a series of discussions with certain custodian banks involved in the cash portion of the escrow deposit program, as described in Item 5 above. The intended structure would permit a greater number of customers to participate in the escrow deposit program than, for example, a commingled "omnibus" account structure at each custodian bank, which would preclude the participation of customers subject to restrictions under the Investment Company Act of 1940 requiring segregation of a registered investment company's funds.

[17] OCC has discussed the proposed changes to the escrow deposit program with DTC and, based on feedback from DTC, no concerns were communicated to OCC by DTC regarding the proposed changes. DTC has also indicated that the proposed changes to the escrow deposit program are consistent with DTC's operations.

[18] Specifically, users of OCC's escrow deposit program would use DTC's Collateral Loan Services, which is described at: *http://www.dtcc.com/products/training/helpfiles/settlement/settlement_help/help/collateral_loans.htm.*

respectively, require that member specific deposits and third-party specific deposits must be made through DTC, and are largely based upon existing Rule 610(e), which discusses effecting deposits in lieu or margin generally. Language has been added to each proposed rule to more accurately articulate that member specific deposits and third-party specific deposits must be made through DTC and the party that is required to effect each type of deposit (*i.e.,* a clearing member or a third-party depository). In the case of member specific deposits and third-party specific deposits, which are already made through DTC, OCC believes that proposed Rules 610A(a) and Rule 610B(a) are rules that clarify existing practices and provide additional operational detail to users of the escrow deposit program (*i.e.,* member specific deposits and third-party specific deposits must be made through DTC's Electronic Data Processing ("EDP") Pledge System and clearing members are required to maintain records of such deposits). Proposed Rules 610C(b) and 610C(c), Manner of Holding and Method of Effecting Escrow Deposits, respectively, are largely based upon existing Rules 610(d), 610(g), 1801(d) and 1801(g), as well as Section 8 of the EDA with language added to more accurately articulate that securities escrow deposits must be made through DTC and cash must be deposited through a Tri-Party Custodian Bank, and provide operational detail concerning effecting escrow deposits. Moreover, OCC is proposing to adopt new Rule 610(e) in order to specify that all types of deposits in the escrow deposit program may be made only during the time specified by OCC. The purpose of specifying the time frames in which participants are allowed to effect deposits in the escrow deposit program is to facilitate OCC daily margin processing and ensure that all of the positions it guarantees are timely collateralized.[19]

In addition to the above, and with respect to escrow deposits only, OCC is proposing enhancements to its process of ensuring that customers meet initial and maintenance minimums.[20] Specifically, under the revised escrow deposit program, in the event a customer falls below the maintenance minimum, the custodian bank, pursuant to the Participating Escrow Bank Agreement, would be required to ensure that the customer deposits additional collateral or escalate the matter to OCC. In addition to such notification requirement, OCC would also implement automated processes to ensure that escrow deposits meet required initial and maintenance minimums. In the event the matter is escalated to OCC or OCC's systems identify a shortfall, OCC would: (1) Demand that the relevant clearing member post additional margin to cover the margin requirement on the applicable position, and (2) if the relevant clearing member fails to satisfy such a demand for additional margin, OCC would close-out the applicable position and demand the escrow deposit from DTC or the Tri-Party Custodian Bank, as applicable, under its existing authority pursuant to Rule 1106. This process is much more robust than the current process concerning maintenance minimums in that OCC currently relies entirely on custodian banks holding escrow deposits to ensure the customer deposits additional collateral, as necessary, to meet initial and maintenance minimums. OCC believes that the proposed new process is more streamlined and efficient because OCC would not have to rely entirely on a custodian bank to ensure customers comply with initial and maintenance minimums.

In order to implement the foregoing within the new rules concerning the escrow deposit program, OCC is proposing to adopt Rules 610C(g) and 610C(h) that concern the initial and maintenance minimum escrow deposit values required by OCC as well as actions OCC's[sic] is permitted to take in the event an escrow deposit falls below a required amount. These proposed rules are based on existing Rules 1801(c) and 1801(e) as well as Sections 3.2, 4.2, 5.2, 3.7, 4.8 and 5.7 of the EDA.[21] With respect to the computation of initial and maintenance minimums, proposed Rules 610C(g) and 610C(h) would explain the formula through which OCC computes the initial and maintenance minimum for a given options position, with the specific percentage applicable to such calculation provided to participants in the escrow deposit program in a schedule posted on OCC's Web site. With respect to the effects of a failure to meet maintenance minimums, proposed Rule 610C(h) sets forth the conditions under which OCC would close out a given escrow deposit should it fall below the requisite maintenance minimum. Proposed Rule 610C(h) would also provide OCC with the authority to use the cash and securities included within the escrow deposit to reimburse itself for costs incurred in connection with the close-out. OCC believes that by virtue of their proposed new location in the rules, as well as the additional detail provided in the proposed rules, all participants, and potential participants, in OCC's escrow deposit program would better understand the rules concerning initial and maintenance minimums, as they relate to escrow deposits, under the enhanced escrow deposit program (versus under the current escrow deposit program).

OCC's Rights to Collateral in the Escrow Deposit Program in the Event of a Clearing Member or Bank Default

The proposed Rules would enhance OCC's default management regime as it relates to the escrow deposit program by more specifically delineating the conditions under, and the process through which, OCC would take possession of collateral within the escrow deposit program should a clearing member or custodian bank default. Specifically, proposed Rules 610A(b), 610B(f), 610C(q) and 610C(r) provide that in the event of a clearing member or custodian bank default OCC would have the right to direct DTC to deliver the securities included in a member specific deposit, third-party specific deposit or escrow deposit to OCC's DTC participant account for the purpose of satisfying the obligations of the clearing member or reimbursing itself for losses incurred as a result of the failure, as applicable. Similarly, pursuant to proposed Rules 610C(q) and 610C(r) OCC would have the right in the event of a Tri-Party Custodian Bank default to take possession of cash included within an escrow deposit for the same purposes. In the event of a custodian bank default, pursuant to proposed Rule 610C(r) OCC would have the right to remove the custodian bank from the escrow deposit program, prohibit the custodian bank from making new escrow deposits, disallow withdrawals with respect to existing deposits, close out short positions covered by escrow deposits at the defaulted custodian bank and use such escrow deposits to reimburse itself for the costs of the close-out, or disregard or require the withdrawal of existing escrow deposits.

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[19] In the event a deposit in the escrow deposit program is not timely made, OCC would collect margin from the relevant clearing member.

[20] Initial and maintenance minimums do not apply to member specific deposits and third-party specific deposits since the clearing member or custodian bank, as applicable, is pledging the security that is deliverable upon exercise of the germane options position.

[21] OCC is proposing to eliminate the concept of "substitutions" of escrow deposit collateral (located in Sections 4.7 and 5.6 of the EDA)—instead a given escrow deposit must at all times must meet the minimum amount (as set forth in proposed Rules 610(g)(1) and (2)) and OCC would permit any excess amount to be withdrawn.

Proposed Rules 610A(b), 610B(f) and 610C(q), concern OCC's rights to a member specific deposits, third-party specific deposits and escrow deposits, respectively, in the event of a clearing member default. They would provide a more specific description of OCC's rights to a third-party specific deposit during a default than existing Rule 610(k) and Section 18 of the EDA. However, the additional specificity that would be provided in proposed Rules 610A(b), 610B(f) and 610C(q) would not change OCC's nor clearing members' rights or obligations regarding member specific, third-party specific or escrow deposits in the event of a clearing member default. Proposed Rule 610C(r) addresses OCC's rights in the event of a custodian bank default and is based on existing Rules 613(h) and 1801(k). Proposed Rule 610C(r) would clarify OCC's existing operational practices when a custodian bank defaults (*i.e.*, demand monies, not allow new deposits, etc. . . ., as described immediately above), but does not change any of the rights of OCC, clearing members or custodian banks as they are set forth in existing Rules 613(h) and 1801(k).

In addition to the above described proposed changes, OCC is proposing to amend Rule 1106 to set forth the treatment of deposits in the escrow deposit program in the event of a suspension of a clearing member. Rule 1106(b)(2) would be amended to provide that OCC may close out a short position of a suspended clearing member covered by a member specific, third-party specific or escrow deposit, subject to the ability of the suspended clearing member or its representative to transfer the short position to another clearing member under certain circumstances. Further, current Rule 1106(b)(3) would be combined with Rule 1106(b)(2) and amended to set forth OCC's right to take possession of the cash and/or securities included within an escrow, member specific, or third-party specific deposit for the purpose of reimbursing itself for costs incurred in connection with the close-out of a short position covered by the deposit. These proposed amendments to Rule 1106 are consistent with proposed Rules 610B(f), 610C(q) and 610C(r).

Clearing Members' Rights to Collateral in the Escrow Deposit Program

Clearing members' rights to escrow deposits and third-party specific deposits would be clarified under the proposed rules. While clearing members have secondary lien rights on the escrow deposits of their customers under the current escrow deposit program, OCC is proposing to add several rules that would clarify these rights and provide additional guidance to clearing members regarding operational steps that would need to be taken in order to exercise their secondary lien rights. Specifically, OCC is proposing to add Rules 610B(c) and 610C(f) to delineate the rights of a clearing member as they relate to third-party specific deposits and escrow deposits. Proposed Rules 610B(c) and 610C(f) would provide for the grant of a security interest by the customer to the clearing member with respect to any given third-party specific deposit and escrow deposit, as applicable. The Rules would further provide that any such security interest of a clearing member in an escrow deposit would be subordinated to OCC's interest. For purposes of perfecting a clearing member's security interest under the UCC, OCC would obtain control over the security both on its own behalf and on behalf of the relevant clearing member, with clear subordination of the clearing member's interest to OCC's interest. In the event OCC had to direct delivery of the security to the clearing member, OCC would do so on the clearing member's behalf. Proposed Rules 610B(c) and 610C(f) would better codify clearing members' secondary lien rights to third-party specific deposits and escrow deposit[sic] than they are currently codified in Section 21 of the EDA, without changing any clearing member rights or obligations. OCC believes that such a codification would provide more transparency regarding clearing member's secondary lien rights under the enhanced escrow deposit program because all users, and potential users, of OCC's escrow deposit program would be able to easily identify and understand the rules concerning clearing members' secondary lien rights in a single location within OCC's publically available Rulebook.

Additionally, OCC is proposing to add several procedural rules that would set forth the process by which clearing members could exercise their secondary lien rights in a given deposit in the escrow deposit program. Proposed Rules 610C(d), 610C(o), 610C(p) and 610C(s), relating to escrow deposits, and proposed Rules 610B(d) and 610B(e), relating to third-party specific deposits, would provide that, in the event of a customer default to a clearing member, the clearing member would have the right to request a "hold" on a deposit. The hold would prevent the withdrawal of deposited securities or cash by a custodian bank or the release of a deposit that would otherwise occur in the ordinary course. Subsequent to placing a hold instruction on a deposit, a clearing member would have the right to request that OCC direct delivery of the deposit to the clearing member through DTC's systems, in the case of securities, or an instruction to the Tri-Party Custodian Bank in the case of cash. Providing clearing members with transparent instructions regarding how to place a hold instruction on and direct delivery of a deposit in the escrow deposit program would significant enhancement to the current escrow deposit program.

OCC is also proposing to adopt Rules 610B(e) and 610C(s), which would protect OCC in the event that it delivers a third-party specific deposit or escrow deposit to a clearing member. Under proposed Rules 610B(e) and 610C(s) a clearing member making a request for delivery would be deemed to have made the appropriate representations to OCC that the clearing member has a right to take possession of the deposited securities or cash and would agree to indemnify OCC against losses resulting from a breach of these representations or the delivery of the deposit. A clearing member would also be required to provide documentation regarding its right to possession of the securities or cash as OCC may reasonably request.

Section 3: Technical and Conforming Changes to OCC'S Rules

OCC also proposes a number of technical, conforming and structural changes in order to move the majority of the terms governing the escrow deposit program into one section in its Rulebook. OCC believes that changes to proposed Rules 610, 610A, 610B and 610C, described in greater detail below, are either non-substantive or conforming changes that do not alter the current rights or obligations of OCC, clearing members or participants in the escrow deposit program.

Proposed Rule 610—Deposits in Lieu of Margin (General Provisions)

Proposed Rule 610 contains general provisions applicable to the escrow deposit program. Specifically, proposed Rule 610(a) replaces existing Rule 610(a) and sets forth general provisions of the escrow deposit program including: (1) Who may participate in the escrow deposit program, (2) the types of positions included in the escrow deposit program, (3) the types of deposits in the escrow deposit program, and (4) the collateral that is eligible for the escrow deposit program. Proposed Rule 610(b) replaces existing Rule

610(b) and provides further specificity with respect to the types of options positions included within OCC's escrow deposit program.[22] This additional specificity clarifies OCC's existing rules and provides more transparency to users and potential users of OCC's escrow deposit program. Proposed Rule 610(c), which is not derived from an existing rule, clarifies OCC's existing practice that OCC will disregard a member specific deposit or a third-party specific deposit if such deposit is no longer eligible to be delivered upon the exercise of the associated stock option contract. Proposed Rule 610(d), which replaces existing Rules 610(c) and 1801(l), requires that deposits within the escrow deposit program be made in accordance with applicable laws and regulations, and be appropriately authorized. Proposed Rule 610(f), which replaces existing Rule 610(l), would clarify OCC's right to use deposits within the escrow deposit program until such deposits are withdrawn. Proposed Rule 610(f) is supplemented by proposed Rules 610A, 610B and 610C with respect to member specific, third-party specific and escrow deposits. Proposed Rule 610(g) codifies OCC's security interest in deposits within the escrow deposit program.

Proposed Rule 610A—Member Specific Deposits

Proposed Rule 610A clarifies many of the current rules concerning the escrow deposit program as they relate to member specific deposits. For example, proposed 610A(c) describes the process by which a clearing member may withdraw a member specific deposit (*i.e.,* effecting a withdrawal or release through DTC's EDP Pledge System and ensuring that its margin requirement at OCC is met). While this issue is addressed in existing Rule 610(j) in general terms, OCC believes that the additional operational details regarding its existing process in proposed Rule 610A(c), along with its inclusion in proposed Rule 610A, further clarify how those existing processes apply to member specific deposits as opposed to other types of deposits in lieu of margin in existing Rule 610.[23] Proposed Rule 610A(d) also establishes that member specific deposits may be "rolled-over," a concept that is not specifically set forth in existing Rule 610 but has historically applied in connection with member specific deposits (formerly specific deposits).

Proposed Rule 610B—Third-Party Specific Deposits

Proposed Rule 610B clarifies many of the current rules concerning third-party specific deposits. For example, proposed 610B(b), which addresses rollovers of a third-party specific deposit and replaces existing Rules 613(a) and Section 9 of the EDA, and articulates how to rollover third-party specific deposits by its inclusion within Rule 610B. Withdrawals and releases of third-party specific deposits are addressed in proposed Rule 610B(d), which is based on existing Rules 613(b) and 613(f). Specifically, releases and withdrawals of third-party specific deposits would be effected through DTC's EDP Pledge System, subject to the clearing member's margin requirement being met, the clearing member's approval of the release or withdrawal, and the absence of a "hold" instruction. In addition, proposed Rule 610B(g) seeks to provide a more detailed description of the effect of a release of a third-party specific deposit than existing Rule 613(i).

Proposed Rule 610C—Escrow Deposits

Proposed Rule 610C, which is based on existing Rule 1801(a), would clarify the current rules concerning escrow deposits. For example, the introductory paragraph of proposed Rule 610C would provide a more detailed overview of a custodian bank's role in the escrow deposit program, specifying such a bank's role in effecting escrow deposits, and would describe eligible positions as they relate to escrow deposits. Proposed Rules 610C(a) through 610C(e) and proposed Rule 610C(t) concern eligible collateral, the manner in which escrow deposits are to be held, and withdrawing an escrow deposit and rolling over an escrow deposit. These operational rules are based on: (1) Existing Rules 610(g) and 1801(b) and Sections 3.1, 4.1 and 5.1 of the EDA with respect to eligible collateral (proposed Rule 610C(a)); (2) existing Rules 610(j) and 1801(i), and Sections 10 and 20 of the EDA with respect to withdrawing an escrow deposit (proposed Rule 610C(d)); (3) existing Rule 613(i) with respect to the effect of a release or withdrawal of an escrow deposit (proposed Rule 610C(t)); and (4) existing Rule 613(a) and Section 9 of the EDA, with respect to rollovers of an escrow deposit (Proposed Rule 610C(e)).

In order to provide additional transparency concerning representations that custodian banks are deemed to make when effecting an escrow deposit, OCC is proposing to move several contractual provisions of the EDA into proposed Rules 610C(i), 610C(j), and 610C(k). Specifically: (1) Proposed Rule 610C(i), which concerns agreements and representations an escrow bank is deemed to have made when effecting an escrow deposit, is based upon Sections 1.6 and 4.6 of the EDA; (2) proposed Rule 610C(j), which concerns representations and warranties a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 of the EDA; and (3) proposed Rule 610C(k), which concerns agreements a custodian bank is deemed to make when giving an instruction to OCC and is based upon Sections 4, 5 and 21 of the EDA. Moreover, and in addition to locating deemed representations of custodian banks in the Rules, proposed Rules 610C(i), 610C(j) and 610C(k) contain language that perfects OCC's security interest in escrow deposits under Section 9 of the UCC, and replace Sections 3.3, 3.4, 4.3, 4.4, 5.3 and 5.4 of the EDA.[24] OCC believes that by locating the above described provisions in the Rules, all users and potential users of OCC's escrow deposit program would better understand the relationship between OCC and custodian banks.

Proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) concern the exercise of options positions collateralized by escrow deposits and the release of escrow deposits upon expiration. As with other parts of proposed Rule 610C, OCC believes that the location of proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) provides all users and potential users of OCC's escrow deposit program with a more transparent understanding of how exercises of options positions affect escrow deposits as well as the manner in which OCC would release an escrow deposit upon the expiration of an options position. Similar to other parts of Rule 610C, proposed Rules 610C(m), 610C(n), 610C(o) and 610C(p) are based on existing Rules of OCC as well as the EDA.[25] Proposed Rule 610C(m) concerns reports OCC provides regarding escrow deposits and is based upon existing Rules 613(d) and 613(e) as well as Sections 11, 12 and 13 of the EDA. Proposed Rules 610C(n), 610C(o) and 610C(p), which concern assignments of exercises and releases of escrow deposits upon expiration is based upon existing Rules 613(f) and 1801(j) and Section 14 of the EDA.

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[22] As described in greater detail below, proposed Rules 610(a) and 610(b) are supplemented by proposed Rules 610A, 610B and 610C.

[23] Proposed Rule 610A(c) supplements to proposed Rule 610(f).

[24] The primary UCC-related provisions in the proposed Rules include Rules 610C(j)(1), 610C(j)(9) and 610C(k)(1), which provide for the perfection of OCC's security interest in deposits consisting of securities under UCC Sections 9–106 and 9–314; Rules 610C(j)(1), 610C(j)(10), and 610C(k)(2), which provide for the perfection of OCC's security interest in deposits consisting of cash under UCC Sections 9–104, 9–312 and 9–314; and Rules 610C(i)(1), 610C(i)(2) and 610C(j)(3), which support the first priority of OCC's security interest by preventing competing liens or claims.

[25] As discussed in Section 3 above, Rules 610C(n) and 610C(p) contain language that prevents the release of an escrow deposit in the event such

Section 4: Transition Period

For the administrative convenience of clearing members, custodian banks and customers, the existing Rules governing deposits in lieu of margin would remain in effect, in parallel with the proposed Rules, for a transition ending November 30, 2017. During this transition period, deposits in lieu of margin could be made under either the existing Rules or the proposed Rules. This will eliminate the need of all clearing members to provide new collateral on a single date in the absence of a transition period. After the transition period, proposed Rules 610, 610A, 610B and 610C would provide the sole means of making deposits in lieu of margin and existing Rules 613 and 1801 would be removed from the Rulebook. In connection with the transition, existing Rule 610 would be re-designated as 610T to indicate that it is a temporary rule, and would become ineffective and removed after the transition period. Furthermore, following the transition period, existing Rule 503, which addresses instructions that call for the payment of a premium by or to the clearing member for whose account the deposit is made, would be removed from the Rules because these instructions would no longer be permitted under the revised escrow deposit program since this aspect of the program has not been used for a number of years.[26] In addition, Government securities would be given full market value under the revised escrow deposit program and therefore existing Rule 610(h) would be removed from the Rules after the transition period.

Consistency With the Payment, Clearing and Settlement Supervision Act

OCC believes that the proposed change concerning deposits in lieu of margin described above is consistent with Section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act[27] because the proposed change would promote robust risk management. OCC collects margin, or deposits in lieu of margin, in order to protect OCC and market participants from risks resulting from default of a clearing member. As described above, this proposed change would enhance OCC's control over and visibility into deposits in lieu of margin. By increasing OCC's transparency and control over deposits in lieu of margin the change would enable OCC to better ensure that it maintains adequate financial resources in the event of a default of a clearing member and thereby promote robust risk management.

The proposed change also provides clarity to clearing members, their customers and potential users of OCC's escrow deposit program regarding the manner in which OCC would risk manage a clearing member default or the default of a customer of a clearing member using the escrow deposit program. By implementing changes that better describe OCC's risk management regime as it relates to use of the deposits of a clearing member, or customer of a clearing member, within the escrow deposit program, OCC would provide all users, or potential users, of its services with additional certainty and predictability concerning actions OCC would take in the event of a clearing member default that would, in turn, promote robust risk management by making it less likely that such a default would have a have a substantive impact on the ongoing operations of OCC or on the markets OCC serves.

Anticipated Effect on and Management of Risk

OCC believes that the proposed change would reduce the nature and level of risk presented to OCC because OCC would enhance its control over and visibility into deposits in lieu of margin that are made to OCC and thereby enhance OCC's default management practices. As described above, OCC collects margin, or deposits in lieu of margin, in order to protect OCC and market participants from risks associated with the default of a clearing member and such deposits can be in cash or non-cash. The proposal would ensure that all non-cash deposits in lieu of margin would be pledged to OCC through DTC, which would enable OCC to (1) better validate its control over such deposits and (2) ensure that it is properly valuing such deposits in real-time. In addition, OCC would have greater visibility into deposits in lieu of margin consisting of cash, and Tri-Party Custodian Banks would contractually agree to only release such deposits in lieu of margin upon the approval of OCC. These processes would ensure that OCC could verify that deposits in lieu of margin sufficiently collateralize germane short options position(s) and OCC would be able to use its existing functionality with DTC to more quickly take possession of such deposits in the event of a clearing member default that would, in turn, protect OCC and market participants from risks associated with a clearing member default. Accordingly, OCC believes the proposed change would reduce the nature or level of risk presented to OCC.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission or the Board of Governors of the Federal Reserve System providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

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deposit is subject to a hold instruction, which is a proposed enhancement to the escrow deposit program.

[26] For the purposes of clarity, existing Rules 613(c), 613(g), 613(h), 613(j) address the same topic and would be removed from OCC's Rulebook following the transition period without being migrated into a proposed Rule.

[27] 12 U.S.C. 5464(b)(1).

- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2016–802 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2016–802. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_802.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2016–802 and should be submitted on or before October 11, 2016.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22533 Filed 9–19–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78837; File No. SR–NASDAQ–2016–126]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Describe Changes to System Functionality Necessary To Implement the Tick Size Pilot Program

September 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2016, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt paragraph (d) and Commentary .12 to Exchange Rule 4770 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).[4] The Exchange is also proposing amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Exchange, Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ BX, Inc., NASDAQ PHLX LLC, New York Stock Exchange LLC, NYSE Arca, Inc., and the NYSE MKT LLC, (collectively “Participants”), filed the Plan with the Commission pursuant to Section 11A of the Act[5] and Rule 608 of Regulation NMS thereunder.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the “June 2014 Order”).[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014,[9] and approved by the Commission, as modified, on May 6, 2015.[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term “System” is defined as the automated system for order execution and trade reporting owned and operated by The NASDAQ Stock Market LLC. The System comprises: (1) A montage for Quotes and Orders, referred to herein as the “Nasdaq Book,” that collects and ranks all Quotes and Orders submitted by Participants; (2) an Order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (3) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment; and (4) data feeds that can be used to display with attribution to Participants' MPIDs all Quotes and Displayed Orders on both the bid and offer side of the market for all price levels then within the Nasdaq Market Center, and that disseminate such additional information about Quotes, Orders, and transactions within the Nasdaq Market Center as shall be reflected in the Nasdaq Rules. *See* Rule 4701(a).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

[5] 15 U.S.C. 78k–1.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[11] As described more fully below, the proposed rules would require members to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Plan will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[17]

As noted above, the Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (c) of Rule 4770 to require members to comply with the quoting and trading provisions of the Plan. The Exchange also adopted paragraph (b) of Rule 4770 to require members to comply with the data collection provisions under Appendix B and C of the Plan.[18] The Exchange is proposing to adopt paragraph (d) of Rule 4770 to describe the changes to System functionality necessary to implement the Plan and to amend certain rules under Rule 4770. As discussed below, certain of these proposed changes are intended to reduce risk in the System by eliminating unnecessary complexity or by eliminating functionality that would serve no purpose or meaningful benefit to the market. The Exchange believes that all of the proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations thereunder.

Proposed System Changes

Proposed paragraph (d) of Rule 4770 would set forth the Exchange's specific procedures for handling, executing, repricing, and displaying of certain Order Types[19] and Order Attributes[20] applicable to Pilot Securities. Unless otherwise indicated, paragraph (d) of Rule 4770 would apply to Order Types and Order Attributes in Pilot Securities in Test Groups One, Two, and Three and not to Pilot Securities included in the Control Group. The Exchange is proposing to adopt new Rule 4770(d)(1) to make it clear that it will not accept an Order in a Test Group Pilot Security that is not entered in the Pilot's minimum price increment of $0.05, applied to all Order Types that require a price and do not otherwise qualify for an exemption to the $0.05 minimum price increment required by the Plan. The Exchange is also clarifying under new Rule 4770(d)(1) that it will use the $0.05 minimum price increment when the System reprices an Order, including when it rounds a derived price up or down. Although not required by the Plan nor prohibited, the Exchange has determined to apply the Trade-at restrictions during the Pre-Market Hours and Post-Market Hours trading sessions,[21] in addition to the regular Market Hours trading session.[22] The Exchange believes that applying the same process and requirements in Test Group Three Pilot Securities will simplify processing of Orders by the

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[10] *See* Tick Plan Approval Order, *supra* note 4. *See also* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

[11] The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Section VII of the Plan.

[18] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[19] An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *See* Rule 4701(e).

[20] An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *Id.*

[21] As used in this proposal, the term "Market Hours" means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). The term "Pre-Market Hours" means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. *See* Rule 4701(g).

[22] Regular Trading Hours is defined by the Plan as having the same meaning as Rule 600(b)(64) of Regulation NMS.

Exchange, avoiding market participant confusion that may be caused by applying only some of the Plan requirements and not others during the different market sessions.

In determining the scope of the proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Plan, System complexity, and the usage of such Order Types and Order Attributes in Pilot Securities. The Exchange found that it can support nearly all Order Type and Order Attribute functionality;[23] however, as described in detail below, it must amend such functionality in a handful of cases to address the requirements of the Plan. Thus, in addition to the changes of broad application discussed above, the Exchange is proposing the following select and discrete amendments to the operation of the following Order Types and Order Attributes, as discussed in detail below: (i) Price to Comply Orders;[24] (ii) Non-Displayed Orders;[25] (iii) Post-Only Orders;[26] (iv) Midpoint Peg Post-Only Orders;[27] (v) Supplemental Orders;[28] (vi) Market Maker Peg Orders;[29] (vii) Midpoint Pegging;[30] (viii) Reserve Size;[31] and (ix) Good-till-Cancelled.[32]

The Exchange is also proposing to amend existing rules under Rule 4770 to clarify the operation of the Plan on the Exchange. Specifically, the Exchange is proposing to amend Rule 4770(a)(1)(D)(ii), which defines the term "Trade-at Intermarket Sweep Order," and Rule 4770(c)(3)(D)(iii)j, which describes an exception to the Trade-at prohibition of the Plan involving the use of Trade-at Intermarket Sweep Orders, as described in detail below.

Lastly, the Exchange is proposing to adopt new Commentary .12 to Rule 4770 to describe what qualifies as a Block Order for purposes of the Trade-at exception under Rule 4770(c)(3)(D)(iii).

Price to Comply Orders

The Price to Comply Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by having its price and display characteristics adjusted to avoid the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. The System does not have a "plain vanilla" limit order that attempts to execute at its limit price and is then posted at its price or rejected if it cannot be posted; rather, the Price to Comply Order, with its price and display adjustment features, is one of the primary Order Types used by Participants to access and display liquidity in the System. The price and display adjustment features of the Order Type enhance efficiency and investor protection by offering an Order Type that first attempts to access available liquidity and then to post the remainder of the Order at prices that are designed to maximize their opportunities for execution.

When a Price to Comply Order is entered by a market participant, the Price to Comply Order will be executed against previously posted Orders on the Nasdaq Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Nasdaq Book (and/or routed if it has been designated as Routable).[33]

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Nasdaq Book at a price equal to or better than the price of the Protected Quotation, the Price to Comply Order will be displayed on the Nasdaq Book at a price one minimum price increment below the current Best Offer (for a Price to Comply Order to buy) or above the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Nasdaq Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price to Comply Order to sell). The posted Order will then be available for execution at its non-displayed price, thus providing opportunities for price improvement to incoming Orders.

A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except the Exchange is proposing to change how it handles a Price to Comply Order in a Test Group Three Pilot Security to ensure that it conforms with the Trade-at prohibition of the Plan. First, the Exchange is proposing that if the Exchange received a Price to Comply Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. Second, if the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Nasdaq Book, the Order will display at one minimum price increment below (above) the Protected Quotation, and the order will be added to the Nasdaq Book at the midpoint of the order's displayed price and the National Best Offer (National Best Bid).[34] Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. Due to the Trade-at requirement of Test Group Three Pilot Securities, the Exchange is also proposing to adjust such Orders repeatedly towards the limit price of the order in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.[35]

Non-Displayed Orders

A Non-Displayed Order is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Nasdaq Book. Thus, "Non-Display" is both a specific Order Type and an Order Attribute of certain other Order Types.

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[23] As discussed below, the Exchange cannot support Supplemental Orders in Test Group Three Pilot Securities.

[24] *See* Rule 4702(b)(1).

[25] *See* Rule 4702(b)(3).

[26] *See* Rule 4702(b)(4).

[27] *See* Rule 4702(b)(5).

[28] *See* Rule 4702(b)(6).

[29] *See* Rule 4702(b)(7).

[30] *See* Rule 4703(d).

[31] *See* Rule 4703(h).

[32] *See* Rule 4703(a)(3).

[33] *See* Rules 4703(f) and 4758.

[34] When the market is locked, the price and display logic for Orders that would lock or cross an away market is slightly different. Display Orders at the locking price will post at the locking price if there are other Orders already posted on Nasdaq at that price (*i.e.*, Nasdaq is part of the locked market). Otherwise, the order will post at one minimum price increment away from the locking price. Non-Displayed orders received when the market is locked will always post one minimum price increment away from the locking price.

[35] The repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 4756(a)(4).

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Nasdaq Book that are priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Nasdaq Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable. During Market Hours, if the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Nasdaq Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Nasdaq Book at that price.

To avoid possible execution of a Non-Displayed Order at the Protected Quote on the Exchange in a Test Group Three Pilot Security, the Exchange is proposing to not allow execution of a Non-Displayed Order in a Test Group Three Pilot Security at the price of a Protected Quotation unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition. If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three security would lock or cross a Protected Quotation of another Market Center, the Order will be added to the Nasdaq Book at either one minimum price increment ($0.05) below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. After posting and if conditions allow, such an Order will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.[36]

The Exchange is proposing a change to how a Non-Displayed Order in a Test Group Three Pilot Security would be treated to comply with the Trade-at requirement. Currently, for a Non-Displayed Order that is entered through a RASH, FIX or QIX port, if, after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp. For a Non-Displayed Order entered through OUCH or FLITE, if, after the Non-Displayed Order is posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the Participant. The Exchange is proposing to trigger repricing of a Non-Displayed Order in a Test Group Three Pilot Security if the Order would lock or cross a Protected Quotation by posting the Order to the Nasdaq Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus, the Order is repriced to avoid execution at the Protected Quotation, but may also receive price improvement. If market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH, QIX, or FIX, if after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Nasdaq Book, if the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant. A posted order is no longer eligible to execute at its posted price under three distinct scenarios. First, in Test Group Pilot Securities, if the NBBO moves such that a posted Order's price crosses a protected quotation, it is no longer executable due to the trade through prohibition under Regulation NMS (this is current functionality). Second, in Test Group Three Pilot Securities, if a Non-Displayed Order is posted at the midpoint and the NBBO moves such that its posted price is no longer a valid increment, the Order will be adjusted as described above. For example, if the NBB is $10.00 and the NBO is $10.05 in a Test Group Three Pilot Security, and a Non-Displayed Order to buy 100 shares of the security with a limit price of $10.05 is received by the System, the Order would be repriced and posted at $10.025 (the midpoint of the NBBO) to avoid locking the market. If subsequently the NBB changes to $9.95 and the NBO to $10.05, then the Order would no longer be eligible for the midpoint exception to the Plan's minimum price increment requirement and therefore would be adjusted and/or cancelled as described above. Third, in Test Group Three Pilot Securities, if the NBBO moves such that the Order's posted price locks a protected quotation, it is no longer executable due to the Trade-at prohibition under the Plan and would be adjusted and/or cancelled as described above.

Post-Only Orders

A Post-Only Order is an Order Type designed to have its price adjusted as needed to post to the Nasdaq Book in compliance with Rule 610(d) under Regulation NMS[37] by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order.

Post-Only Orders in Test Group Pilot Securities will operate as described under Rule 4702(b)(4), however, the Exchange is proposing changes to the handling of a Post-Only Order in Test Group Three Pilot Securities to ensure that the Trade-at prohibition is enforced. Specifically, the Exchange is proposing to modify how a Post-Only Order in a Test Group Three Pilot Security is handled if it locks or crosses the Protected Quotation of another market center. If the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Nasdaq Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. Thereafter and if market conditions allow, the Post-Only

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[36] The repricing of Non-Displayed Orders in Test Group Three Pilot Securities in accordance with changes to the NBBO up (down) to the Order's limit price are not subject to the limitations on Order updates, as described in Rule 4756(a)(4).

[37] 17 CFR 242.610(d).

Order will be adjusted repeatedly towards its limit price in accordance with changes to the NBBO or the best price on the Nasdaq Book, as applicable, until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.[38]

Midpoint Peg Post-Only Orders

A "Midpoint Peg Post-Only Order" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the party entering the Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the Nasdaq Book. The Midpoint Peg Post-Only Order is available during Market Hours only.

The Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that Midpoint Peg Post-Only Orders in any of the Test Group Pilot Securities may execute in an increment other than the minimum price increment of the Plan.

Supplemental Orders

A "Supplemental Order" is an Order Type with a Non-Display Order Attribute that is held on the Nasdaq Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). A Supplemental Order may be entered through the OUCH protocol only. The Order allows a Participant to provide greater depth of liquidity at the NBBO without signaling the full extent of its trading interest to other Participants.

Upon entry, a Supplemental Order will always post to the Nasdaq Book at a price equal to the Best Bid (for buys) or the Best Offer (for sells). Thereafter, the Supplemental Order may execute against an Order that is designated as eligible for routing, after the Order has executed against all other liquidity on the Nasdaq Book but before routing. An Order will execute against a Supplemental Order(s) only at the NBBO, only if the NBBO is not locked or crossed, and only if the Order can be executed in full.

The Exchange has determined that there is never a time when a Supplemental Order would be able to execute in Test Group Three Pilot Securities. Supplemental orders only execute when a routable order would otherwise route to Protected Quotations. Executing an order against a Supplemental Order would violate the Trade-at prohibition because it is a non-display order and because the very fact that the incoming order is about to be routed signifies that there is a Protected Quotation at the same price as the non-display Supplemental Order.

Market Maker Peg Orders

A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).[39] The price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH, FIX or QIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current Best Bid (Best Offer) (including Nasdaq), or if no such Best Bid or Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.*, dividends or stock splits) in the security.

Upon entry, the price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would be $9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the Nasdaq Book, its price is adjusted if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the price of the Market Maker Peg Order and the Reference Price reaches the Defined Limit (as defined in Rule 4613), the price of a Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the Best Bid increased to $10.17, such that the price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to $9.35, or 8% away from the Best Bid. Note that calculated prices of less than the minimum increment will be rounded in a manner that ensures that the posted price will be set at a level that complies with the percentages stipulated by this rule. If the limit price of the Order is outside the Defined Limit, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the price of a Market Maker Peg Order to buy (sell) is within one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the price of the Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would initially be $9.20. If the Best Bid then moved to $9.57, such that the price of the Market Maker Peg Order would be a minimum of $0.01 more than a price that is 4% less than the Best Bid, rounded up (*i.e.* $9.57 − ($9.57 × 0.04) = $9.1872, rounding up to $9.19), the Order will be repriced to $8.81, or 8% away from the Best Bid.

A Market Maker may enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but such an offset will be expressed as a price difference from the Reference Price. Such a Market Maker Peg Order will be repriced in the same manner as a Price to Display Order with Attribution and Primary Pegging. As a result, the price of the Order will be adjusted whenever the price to which the Order is pegged is changed.

A new timestamp is created for a Market Maker Peg Order each time that its price is adjusted. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled or rejected. If, after entry, a Market Maker Peg Order is priced based on a Reference Price other than the NBBO and such Market Maker Peg Order is established as the Best Bid or Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until a new Reference Price is established.

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[38] As discussed above, repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 4756(a)(4). *Supra* note 35.

[39] As with other Order Types, the Market Maker Peg Order must be an Order either to buy or to sell; thus, at least two Orders would be required to maintain a two-sided quotation.

In light of the minimum price increment requirement of the Plan, the Exchange is proposing to require the displayed price of a Market Maker Peg Order in a Test Group One, Two or Three Pilot Security to be rounded up (down) to the nearest minimum price increment for bids (offers), if it would otherwise display at an increment smaller than minimum price increment. For example, if the NBB is $10.05 and the NBO is $10.15, and the Designated Percentage is 28%, the displayed price of a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security would be $7.25 (*i.e.* $10.05 − ($10.05 × 0.28) = $7.236, rounded up to $7.25). Using the same market, but with a Market Maker Peg Order to sell 100 shares, the Order would be displayed at $12.95 (*i.e.* $10.15 − ($10.15 × 0.28) = $12.992, rounded down to $12.95). Thus, the rounding done to derive the price of the Market Maker Peg Order in a Test Group Pilot Security will conform to the minimum price increment requirement of the Plan.

As a consequence of conforming the Market Maker Peg Order to the minimum price increment of the Plan, a Market Maker Peg Order may have a higher likelihood of execution, particularly in lower priced securities. For example, if a member entered a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security with a limit price of $1.70 when the NBB is $1.60 and the NBO is $1.65, if the security is a Tier 2 security, the Order would be pegged at 28% from the NBB, which is $1.20 ($1.60 × .72 = $1.152 which rounds up to $1.20). If the market subsequently moves downward to a NBB of $1.20 and NBO of $1.30, the buy Market Maker Peg Order would not reprice because it had not reached one minimum price increment more than a price that is 4% less than the NBB (*i.e.,* $1.20 × .96 = $1.152, which rounds up to $1.20 and which is not greater than the NBB + $0.05). Thus, the Market Maker Peg Order may receive an execution prior to reaching a point at which it would reprice. This increased likelihood of execution of Market Maker Peg Orders would occur in any Order in a Test Group Pilot Security with a price less than $1.25.

Midpoint Pegging

Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

As discussed above, the Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that an Order in a Test Group Pilot Security with Midpoint Pegging may execute in an increment other than the minimum price increment of the Plan.

Reserve Size

Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the Nasdaq Market Center will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Nasdaq Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Nasdaq Book as a Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the level stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the NASDAQ Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non-Displayed Order of 3,000 and the 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non-Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by Nasdaq will show the execution and decrementation of the Displayed Order, followed by replenishment of the Displayed Order.

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

The Exchange is proposing to not allow a resting order in a Test Group Three Pilot Security with a Reserve Size to execute the non-displayed Reserve Size at the price of a Protected

Quotation of another market center unless the incoming order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the Exchange received a Reserve Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is not attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Nasdaq Book, the displayed portion of the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Nasdaq Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Nasdaq Book, the displayed portion of the Order will be adjusted and displayed at one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be added to the Nasdaq Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). If after being posted to the Nasdaq Book, the NBBO changes so that the Reserve Order, if it is not attributable, would lock or cross a Protected Quotation, the displayed portion of the Reserve Order will display one minimum price increment below (above) the Protected Quotation, and the Order will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid).[40] If after being posted to the Nasdaq Book, the NBBO changes so that the Reserve Order in a Test Group Three Pilot Security, if it is attributable, would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the displayed portion of the Reserve Order will be adjusted and display one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would continue to comply with the Trade-at requirement by avoiding potential execution at a prohibited price.

Good-Till-Cancelled

Good-till-Cancelled is a Time-in-Force Order Attribute that is designated to deactivate one year after entry. Under certain circumstances at the election of the member, an Order designated as Good-till-Cancelled must be adjusted to account for corporate actions related to a dividend, payment or distribution. Rule 4761(b) sets forth the circumstances and method by which an Order designated as Good-till-Cancelled is adjusted. The Exchange is making it clear that an order in a Test Group Pilot Security with a Good-till-Cancelled Time-in-Force that is adjusted pursuant to Rule 4761(b) will be adjusted based on a $0.05 increment.

Rule 4770(a) and (c) Changes

Rule 4770(a) provides definitions of terms used under the Rule. Rule 4770(a) defines the term "Trade-at Intermarket Sweep Order" as "a limit order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders." Rule 4770(c)(3)(D)(iii)j. provides an exception to the Trade-at prohibition, requiring that, to satisfy the exception, the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at.

The Exchange is proposing to amend paragraph (ii) of Rule 4770(a) and Rule 4770(c)(3)(D)(iii)j. to allow the Exchange to use Intermarket Sweep Orders in lieu of Trade-at Intermarket Sweep Orders, when it is in receipt of an Order from a member that would trade through a protected price on another market. An Intermarket Sweep Order or "ISO" is an Order Attribute that allows the Order to be executed within the Nasdaq Market Center by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) under Regulation NMS. ISOs are immediately executable within the Nasdaq Market Center against Orders against which they are marketable.

For purposes of the Exchange's satisfaction of the Trade-at Intermarket Sweep Order exception to the Trade-at prohibition of Test Group Three Pilot Securities, the ISO Order will operate functionally identically to the use of a Trade-at Intermarket Sweep Order. Intermarket Sweep Orders are sent by the exchange to execute against displayed size represented in away market centers' Protected Quotation and thus provide the same function as a Trade-at Intermarket Sweep Order because either order type would execute against the displayed portion of the away market centers' liquidity. The Exchange's routing broker is currently programmed to accept and route ISO Orders and adding an additional functionality to support routing of Trade-at Intermarket Sweep Orders would add complexity to the process with no functional benefit. Accordingly, the Exchange is proposing to use ISOs when routing Orders to satisfy the exception to the Trade-at prohibition.

New Commentary .12

The Exchange is proposing to adopt a new Commentary .12 to Rule 4770 to clarify what qualifies as a Block Order for purposes of the Block Size exception to the Trade-at prohibition. Rule 4770(c)(3)(D)(iii)c. provides an exception to the Trade-at prohibition for an Order that is of Block Size at the time of origin and is not an aggregation of non-block Orders, broken into Orders smaller than Block Size prior to submitting the Order to a Trading Center for execution, or is executed on multiple Trading Centers. The Plan defines Block Size as an Order of at least 5,000 shares or for a quantity of stock having a market value of at least $100,000. The Exchange has assessed the technological complexity and effort required to change the System to identify the market value of a quantity of stock and found that it would be exceedingly burdensome and complex without any clear benefit to the Exchange, its members, and the marketplace as a whole. As a consequence, the Exchange is proposing to only allow Orders that have a minimum size of 5,000 shares to qualify as Block Size for purposes of the exception provided by Rule 4770(c)(3)(D)(iii)c. and will only execute if the execution in aggregate is at least 5,000 shares.

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[40] Both a Price to Comply Order and a Price to Display Order with a Reserve Attribute would be repriced pursuant to Reserve Order process described in proposed Rule 4770(d)(9). A Price to Display Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, and are available solely to Participants that are Market Makers. *See* Rule 4702(b)(2).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it allows the Exchange to make changes to its handling of Order Types and Order Attributes necessary to implement the requirements of the Plan on its System. The Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[43] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

The Exchange is a Participant under the Plan and is subject to the Plan's provisions. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan, which otherwise may occur given existing System functionality. The proposal would also help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–126. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–126, and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22536 Filed 9–19–16; 8:45 am]

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[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] 15 U.S.C. 78k–1.

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78840; File No. SR–NYSEArca–2016–100]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Direxion Daily Municipal Bond Taxable Bear 1X Fund Under NYSE Arca Equities Rule 5.2(j)(3)

September 14, 2016.

On July 13, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Direxion Daily Municipal Bond Taxable Bear 1X Fund. The proposed rule change was published for comment in the **Federal Register** on August 3, 2016.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 17, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 1, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–100).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22539 Filed 9–19–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78433 (July 28, 2016), 81 FR 51241.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78835; File No. SR–Phlx–2016–92]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Describe Changes to System Functionality Necessary To Implement the Tick Size Pilot Program

September 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt paragraph (d) and Commentary .12 to Exchange Rule 3317 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'').[4] The Exchange is also proposing amendments to Rule 3317(a) and (c) to clarify how the Trade-at exception may be satisfied.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Exchange, Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ BX, Inc., The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., and the NYSE MKT LLC, (collectively ''Participants''), filed the Plan with the Commission pursuant to Section 11A of the Act[5] and Rule 608 of Regulation NMS thereunder.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[7] The Plan [8] was published for comment in the **Federal Register** on November 7, 2014,[9] and approved by the Commission, as modified, on May 6, 2015.[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''PSX,'' or ''System'' is defined as the automated system for order execution and trade reporting owned and operated by the Exchange. The Exchange will operate PSX as an automated trading center for purposes of Rule 600(b)(4) of Regulation NMS. PSX comprises: (1) A montage for Quotes and Orders, referred to herein as the ''PSX Book'', that collects and ranks all Quotes and Orders submitted by Participants; (2) an Order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (3) a trade reporting service that submits ''locked-in'' trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a ''locked-in'' trading environment; and (4) data feeds that can be used to display with attribution to PSX Participants' MPIDs all Quotes and Displayed Orders on both the bid and offer side of the market for all price levels then within the PSX Market, and that disseminate such additional information about Quotes, Orders, and transactions within PSX as shall be reflected in the PSX Rules. *See* Rule 3301(a).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[5] 15 U.S.C. 78k–1.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[11] As described more fully below, the proposed rules would require members to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Plan will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS [16] will apply to the Trade-at requirement.

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[17]

As noted above, the Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (c) of Rule 3317 to require members to comply with the quoting and trading provisions of the Plan. The Exchange also adopted paragraph (b) of Rule 3317 to require members to comply with the data collection provisions under Appendix B and C of the Plan.[18] The Exchange is proposing to adopt paragraph (d) of Rule 3317 to describe the changes to System functionality necessary to implement the Plan and to amend certain rules under Rule 3317. As discussed below, certain of these proposed changes are intended to reduce risk in the System by eliminating unnecessary complexity or by eliminating functionality that would serve no purpose or meaningful benefit to the market. The Exchange believes that all of the proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations thereunder.

Proposed System Changes

Proposed paragraph (d) of Rule 3317 would set forth the Exchange's specific procedures for handling, executing, repricing, and displaying of certain Order Types [19] and Order Attributes [20] applicable to Pilot Securities. Unless otherwise indicated, paragraph (d) of Rule 3317 would apply to Order Types and Order Attributes in Pilot Securities in Test Groups One, Two, and Three and not to Pilot Securities included in the Control Group. The Exchange is proposing to adopt new Rule 3317(d)(1) to make it clear that it will not accept an Order in a Test Group Pilot Security that is not entered in the Pilot's minimum price increment of $0.05, applied to all Order Types that require a price and do not otherwise qualify for an exemption to the $0.05 minimum price increment required by the Plan. The Exchange is also clarifying under new Rule 3317(d)(1) that it will use the $0.05 minimum price increment when the System reprices an Order, including when it rounds a derived price up or down. Although not required by the Plan nor prohibited, the Exchange has determined to apply the Trade-at restrictions during the Pre-Market Hours and Post-Market Hours trading sessions,[21] in addition to the regular

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[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[10] *See* Tick Plan Approval Order, *supra* note 4. *See also* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

[11] The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Section VII of the Plan.

[18] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[19] An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the PSX Book when submitted to PSX. *See* Rule 3301(e).

[20] An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the PSX Book when submitted to PSX. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 3301A and 3301B. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *Id.*

[21] As used in this proposal, the term "Market Hours" means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when PSX closes early). The term "System Hours"

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Market Hours trading session.[22] The Exchange believes that applying the same process and requirements in Test Group Three Pilot Securities will simplify processing of Orders by the Exchange, avoiding market participant confusion that may be caused by applying only some of the Plan requirements and not others during the different market sessions.

In determining the scope of the proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Plan, System complexity, and the usage of such Order Types and Order Attributes in Pilot Securities. The Exchange found that it can support nearly all Order Type and Order Attribute functionality; however, as described in detail below, it must amend such functionality in a handful of cases to address the requirements of the Plan. Thus, in addition to the changes of broad application discussed above, the Exchange is proposing the following select and discrete amendments to the operation of the following Order Types and Order Attributes, as discussed in detail below: (i) Price to Comply Orders[23]; (ii) Non-Displayed Orders[24]; (iii) Post-Only Orders[25]; (iv) Market Maker Peg Orders[26]; (v) Midpoint Peg Post-Only Order[27]; (vi) Midpoint Pegging[28]; (vii) Reserve Size[29]; and (viii) Good-till-Cancelled[30].

The Exchange is also proposing to amend existing rules under Rule 3317 to clarify the operation of the Plan on the Exchange. Specifically, the Exchange is proposing to amend Rule 3317(a)(1)(D)(ii), which defines the term "Trade-at Intermarket Sweep Order," and Rule 3317(c)(3)(D)(iii)j, which describes an exception to the Trade-at prohibition of the Plan involving the use of Trade-at Intermarket Sweep Orders, as described in detail below.

Lastly, the Exchange is proposing to adopt new Commentary .12 to Rule 3317 to describe what qualifies as a Block Order for purposes of the Trade-at exception under Rule 3317(c)(3)(D)(iii).

Price To Comply Orders

The Price to Comply Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by having its price and display characteristics adjusted to avoid the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. The System does not have a "plain vanilla" limit order that attempts to execute at its limit price and is then posted at its price or rejected if it cannot be posted; rather, the Price to Comply Order, with its price and display adjustment features, is one of the primary Order Types used by Participants to access and display liquidity in the System. The price and display adjustment features of the Order Type enhance efficiency and investor protection by offering an Order Type that first attempts to access available liquidity and then to post the remainder of the Order at prices that are designed to maximize their opportunities for execution.

When a Price to Comply Order is entered by a market participant, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).[31]

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Exchange Book at a price equal to or better than the price of the Protected Quotation, the Price to Comply Order will be displayed on the Exchange Book at a price one minimum price increment below the current Best Offer (for a Price to Comply Order to buy) or above the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price to Comply Order to sell). The posted Order will then be available for execution at its non-displayed price, thus providing opportunities for price improvement to incoming Orders.

A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(1) except the Exchange is proposing to change how it handles a Price to Comply Order in a Test Group Three Pilot Security to ensure that it conforms with the Trade-at prohibition of the Plan. First, the Exchange is proposing that if the Exchange received a Price to Comply Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. Second, if the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the Order will display at one minimum price increment below (above) the Protected Quotation, and the order will be added to the Exchange Book at the midpoint of the order's displayed price and the National Best Offer (National Best Bid).[32] Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. Due to the Trade-at requirement of Test Group Three Pilot Securities, the Exchange is also proposing to adjust such Orders repeatedly towards the limit price of the order in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.[33]

Non-Displayed Orders

A Non-Displayed Order is an Order Type that is not displayed to other

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means the period of time beginning at 8:00 a.m. ET and ending at 5:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when PSX closes early). The term "Pre-Market Hours" means the period of time beginning at 8:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 5:00 p.m. ET. *See* Rule 3301(g).

[22] Regular Trading Hours is defined by the Plan as having the same meaning as Rule 600(b)(64) of Regulation NMS.

[23] *See* Rule 3301A(b)(1).

[24] *See* Rule 3301A(b)(3).

[25] *See* Rule 3301A(b)(4).

[26] *See* Rule 3301A(b)(5).

[27] *See* Rule 3301A(b)(6).

[28] *See* Rule 3302A(d).

[29] *See* Rule 3302A(h).

[30] *See* Rule 3302A(a)(3).

[31] *See* Rules 3301B(f) and 3315.

[32] When the market is locked, the price and display logic for Orders that would lock or cross an away market is slightly different. Displayed Orders at the locking price will post at the locking price if there are other orders already posted on PSX at that price (*i.e.*, PSX is part of the locked market). Otherwise, the order will post at one minimum price increment away from the locking price. Non-displayed Orders received when the market is locked will always post one minimum price increment away from the locking price.

[33] The repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 3306(a)(4).

Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Exchange Book. Thus, "Non-Display" is both a specific Order Type and an Order Attribute of certain other Order Types.

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Exchange Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable. During Market Hours, if the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Exchange Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Exchange Book at that price.

To avoid possible execution of a Non-Displayed Order at the Protected Quote on the Exchange in a Test Group Three Pilot Security, the Exchange is proposing to not allow execution of a Non-Displayed Order in a Test Group Three Pilot Security at the price of a Protected Quotation unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition. If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three security would lock or cross a Protected Quotation of another Market Center, the Order will be added to the Exchange Book at either one minimum price increment ($0.05) below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. After posting and if conditions allow, such an Order will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.[34]

The Exchange is proposing a change to how a Non-Displayed Order in a Test Group Three Pilot Security would be treated to comply with the Trade-at requirement. Currently, for a Non-Displayed Order that is entered through a RASH or FIX port, if, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp. For a Non-Displayed Order entered through OUCH or FLITE, if, after the Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the Participant. The Exchange is proposing to trigger repricing of a Non-Displayed Order in a Test Group Three Pilot Security if the Order would lock or cross a Protected Quotation by posting the Order to the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus, the Order is repriced to avoid execution at the Protected Quotation, but may also receive price improvement. If market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, if the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant. A posted order is no longer eligible to execute at its posted price under three distinct scenarios. First, in Test Group Pilot Securities, if the NBBO moves such that the posted Order's price crosses a protected quotation, it is no longer executable due to the trade through prohibition under Regulation NMS (this is current functionality). Second, in Test Group Three Pilot Securities, if a Non-Displayed Order is posted at the midpoint and the NBBO moves such that its posted price is no longer a valid increment, the Order will be adjusted as described above. For example, if the NBB is $10.00 and the NBO is $10.05 in a Test Group Three Pilot Security, and a Non-Displayed Order to buy 100 shares of the security with a limit price of $10.05 is received by the System, the Order would be repriced and posted at $10.025 (the midpoint of the NBBO) to avoid locking the market. If subsequently the NBB changes to $9.95 and the NBO to $10.05, then the Order would no longer be eligible for the midpoint exception to the Plan's minimum price increment requirement and therefore would be adjusted and/or cancelled as described above. Third, in Test Group Three Pilot Securities, if the NBBO moves such that the Order's posted price locks a protected quotation, it is no longer executable due to the Trade-at prohibition under the Plan and would be adjusted and/or cancelled as described above.

Post-Only Orders

A Post-Only Order is an Order Type designed to have its price adjusted as needed to post to the Exchange Book in compliance with Rule 610(d) under Regulation NMS[35] by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order.

Post-Only Orders in Test Group Pilot Securities will operate as described under Rule 3301A(b)(4), however, the Exchange is proposing changes to the handling of a Post-Only Order in Test Group Three Pilot Securities to ensure that the Trade-at prohibition is enforced. Specifically, the Exchange is proposing to modify how a Post-Only Order in a Test Group Three Pilot Security is handled if it locks or crosses the Protected Quotation of another market center. If the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. Thereafter and if market conditions allow, the Post-Only Order will be adjusted repeatedly towards its limit price in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable, until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.[36]

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[34] The repricing of Non-Displayed Orders in Test Group Three Pilot Securities in accordance with changes to the NBBO up (down) to the Order's limit price are not subject to the limitations on Order updates, as described in Rule 3306(a)(4).

[35] 17 CFR 242.610(d).

Market Maker Peg Orders

A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a price that is compliant with the quotation requirements for Market Makers set forth in Rule 3213(a)(2).[37] The price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current Best Bid (Best Offer) (including PSX), or if no such Best Bid or Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.*, dividends or stock splits) in the security.

Upon entry, the price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 3213) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 3213(a)(2). For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would be $9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the Exchange Book, its price is adjusted if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the price of the Market Maker Peg Order and the Reference Price reaches the Defined Limit (as defined in Rule 3213), the price of a Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the Best Bid increased to $10.17, such that the price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to $9.35, or 8% away from the Best Bid. Note that calculated prices of less than the minimum increment will be rounded in a manner that ensures that the posted price will be set at a level that complies with the percentages stipulated by this rule. If the limit price of the Order is outside the Defined Limit, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the price of a Market Maker Peg Order to buy (sell) is within one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the price of the Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would initially be $9.20. If the Best Bid then moved to $9.57, such that the price of the Market Maker Peg Order would be a minimum of $0.01 more than a price that is 4% less than the Best Bid, rounded up (*i.e.* $9.57—($9.57 × 0.04) = $9.1872, rounding up to $9.19), the Order will be repriced to $8.81, or 8% away from the Best Bid.

A Market Maker may enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but such an offset will be expressed as a price difference from the Reference Price. Such a Market Maker Peg Order will be repriced in the same manner as a Price to Display Order with Attribution and Primary Pegging. As a result, the price of the Order will be adjusted whenever the price to which the Order is pegged is changed.

A new timestamp is created for a Market Maker Peg Order each time that its price is adjusted. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled or rejected. If, after entry, a Market Maker Peg Order is priced based on a Reference Price other than the NBBO and such Market Maker Peg Order is established as the Best Bid or Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until a new Reference Price is established.

In light of the minimum price increment requirement of the Plan, the Exchange is proposing to require the displayed price of a Market Maker Peg Order in a Test Group One, Two or Three Pilot Security to be rounded up (down) to the nearest minimum price increment for bids (offers), if it would otherwise display at an increment smaller than minimum price increment. For example, if the NBB is $10.05 and the NBO is $10.15, and the Designated Percentage is 28%, the displayed price of a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security would be $7.25 (*i.e.* $10.05 – ($10.05 × 0.28) = $7.236, rounded up to $7.25). Using the same market, but with a Market Maker Peg Order to sell 100 shares, the Order would be displayed at $12.95 (*i.e.* $10.15 + ($10.15 × 0.28) = $12.992, rounded down to $12.95). Thus, the rounding done to derive the price of the Market Maker Peg Order in a Test Group Pilot Security will conform to the minimum price increment requirement of the Plan.

As a consequence of conforming the Market Maker Peg Order to the minimum price increment of the Plan, a Market Maker Peg Order may have a higher likelihood of execution, particularly in lower priced securities. For example, if a member entered a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security with a limit price of $1.70 when the NBB is $1.60 and the NBO is $1.65, if the security is a Tier 2 security, the Order would be pegged at 28% from the NBB, which is $1.20 ($1.60 × .72 = $1.152 which rounds up to $1.20). If the market subsequently moves downward to a NBB of $1.20 and NBO of $1.30, the buy Market Maker Peg Order would not reprice because it had not reached one minimum price increment more than a price that is 4% less than the NBB (*i.e.*, $1.20 × .96 = $1.152, which rounds up to $1.20 and which is not greater than the NBB + $0.05). Thus, the Market Maker Peg Order may receive an execution prior to reaching a point at which it would reprice. This increased likelihood of execution of Market Maker Peg Orders would occur in any Order in a Test Group Pilot Security with a price less than $1.25.

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[36] As discussed above, repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 3306(a)(4). *Supra* note 33.

[37] As with other Order Types, the Market Maker Peg Order must be an Order either to buy or to sell; thus, at least two Orders would be required to maintain a two-sided quotation.

Midpoint Peg Post-Only Orders

A "Midpoint Peg Post-Only Order" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the party entering the Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the Exchange Book. The Midpoint Peg Post-Only Order is available during Market Hours only.

The Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that Midpoint Peg Post-Only Orders in any of the Test Group Pilot Securities may execute in an increment other than the minimum price increment of the Plan.

Midpoint Pegging

Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

As discussed above, the Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that an Order in a Test Group Pilot Security with Midpoint Pegging may execute in an increment other than the minimum price increment of the Plan.

Reserve Size

Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, PSX will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the level stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the Exchange Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non-Displayed Order of 3,000 and the 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non-Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by the Exchange will show the execution and decrementation of the Displayed Order, followed by replenishment of the Displayed Order.

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

The Exchange is proposing to not allow a resting order in a Test Group Three Pilot Security with a Reserve Size to execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 3317(c)(3)(D). If the Exchange received a Reserve Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is not attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the displayed portion of the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the displayed portion of the Order will be adjusted and displayed at one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). If after being posted to the Exchange Book, the NBBO changes so that the Reserve Order, if it is not attributable, would lock or cross a Protected Quotation, the displayed portion of the Reserve Order will display one minimum price increment below (above) the Protected Quotation, and the Order will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid).[38] If after being posted to the Exchange Book, the NBBO changes so that the Reserve Order in a Test Group Three Pilot Security, if it is attributable, would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the displayed portion of the Reserve Order will be adjusted and display one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would continue to comply with the Trade-at requirement by avoiding potential execution at a prohibited price.

Good-till-Cancelled

Good-till-Cancelled is a Time-in-Force Order Attribute that is designated to deactivate one year after entry. Under certain circumstances at the election of the member, an Order designated as Good-till-Cancelled must be adjusted to account for corporate actions related to a dividend, payment or distribution. Rule 3311(b) sets forth the circumstances and method by which an Order designated as Good-till-Cancelled is adjusted. The Exchange is making it clear that an order in a Test Group Pilot Security with a Good-till-Cancelled Time-in-Force that is adjusted pursuant to Rule 3311(b) will be adjusted based on a $0.05 increment.

Rule 3317(a) and (c) Changes

Rule 3317(a) provides definitions of terms used under the Rule. Rule 3317(a) defines the term "Trade-at Intermarket Sweep Order" as "a limit order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders." Rule 3317(c)(3)(D)(iii)j. provides an exception to the Trade-at prohibition, requiring that, to satisfy the exception, the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at.

The Exchange is proposing to amend paragraph (ii) of Rule 3317(a) and Rule 3317(c)(3)(D)(iii)j. to allow the Exchange to use Intermarket Sweep Orders in lieu of Trade-at Intermarket Sweep Orders, when it is in receipt of an Order from a member that would trade through a protected price on another market. An Intermarket Sweep Order or "ISO" is an Order Attribute that allows the Order to be executed within PSX by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) under Regulation NMS. ISOs are immediately executable within PSX against Orders against which they are marketable.

For purposes of the Exchange's satisfaction of the Trade-at Intermarket Sweep Order exception to the Trade-at prohibition of Test Group Three Pilot Securities, the ISO Order will operate functionally identically to the use of a Trade-at Intermarket Sweep Order. Intermarket Sweep Orders are sent by the exchange to execute against displayed size represented in away market centers' Protected Quotation and thus provide the same function as a Trade-at Intermarket Sweep Order because either order type would execute against the displayed portion of the away market centers' liquidity. The Exchange's routing broker is currently programmed to accept and route ISO Orders and adding an additional functionality to support routing of Trade-at Intermarket Sweep Orders would add complexity to the process with no functional benefit. Accordingly, the Exchange is proposing to use ISOs when routing Orders to satisfy the exception to the Trade-at prohibition.

New Commentary .12

The Exchange is proposing to adopt a new Commentary .12 to Rule 3317 to clarify what qualifies as a Block Order for purposes of the Block Size exception to the Trade-at prohibition. Rule 3317(c)(3)(D)(iii)c. provides an exception to the Trade-at prohibition for an Order that is of Block Size at the time of origin and is not an aggregation of non-block Orders, broken into Orders smaller than Block Size prior to submitting the Order to a Trading Center for execution, or is executed on multiple Trading Centers. The Plan defines Block Size as an Order of at least 5,000 shares or for a quantity of stock having a market value of at least $100,000. The Exchange has assessed the technological complexity and effort required to change the System to identify the market value of a quantity of stock and found that it would be exceedingly burdensome and complex without any clear benefit to the Exchange, its members, and the marketplace as a whole. As a consequence, the Exchange is proposing to only allow Orders that have a minimum size of 5,000 shares to qualify as Block Size for purposes of the exception provided by Rule 3317(c)(3)(D)(iii)c. and will only execute if the execution in aggregate is at least 5,000 shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[39] in general, and furthers the objectives of Section 6(b)(5) of the Act,[40] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it allows the Exchange to make changes to its handling of Order Types and Order Attributes necessary to implement the requirements of the Plan on its System. The Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[41] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

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[38] Both a Price to Comply Order and a Price to Display Order with a Reserve Attribute would be repriced pursuant to Reserve Order process described in proposed Rule 3317(d)(9). A Price to Display Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, and are available solely to Participants that are Market Makers. *See* Rule 3301A(b)(2).

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

The Exchange is a Participant under the Plan and is subject to the Plan's provisions. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan, which otherwise may occur given existing System functionality. The proposal would also help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–92, and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22534 Filed 9–19–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Notice of Exempt Preliminary Roll-Up Communication, SEC File No. 270–396, OMB Control No. 3235–0452.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 14a–6(n) [17 CFR 240.14a–6(n)] under the Securities Exchange Act of 1934 ("Exchange Act") (U.S.C. 78a *et seq.*) requires any person that engages in a proxy solicitation is subject to

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[41] 15 U.S.C. 78k–1.

[42] 17 CFR 200.30–3(a)(12).

Exchange Act Rule 14a–2(b)(4) [17 CFR 240.14a–2(b)(4)] to file a Notice of Exempt Preliminary Roll-Up Communication (“Notice”) [17 CFR 240.14a–104] with the Commission. The Notice provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person engaging in the solicitation. The Notice is filed on occasion and the information required is mandatory. All information is provided to the public upon request. We estimate the Notice takes approximately 0.25 hours per response and is filed by approximately 4 respondents for a total of one annual burden hour (0.25 hours per response × 4 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 15, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22625 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78847; File No. SR–BatsBZX–2016–34]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, to BZX Rule 14.1(i), Managed Fund Shares, To List and Trade Shares of the ProShares Crude Oil Strategy ETF

September 15, 2016.

I. Introduction

On July 1, 2016, Bats BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (“Shares”) of the ProShares K–1 Free Crude Oil Strategy ETF (“Fund”), a series of ProShares Trust (“Trust”), under Rule 14.11(i) (“Managed Fund Shares”). The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.[3] The Commission received no comments on the proposed rule change. On August 19, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal in its entirety.[4] On August 23, 2016, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On September 15, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7] No comments have been received regarding the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change[8]

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[9] The Fund will be an actively managed fund that seeks to provide exposure to the West Texas Intermediate (“WTI”) crude oil futures markets. The Fund's strategy seeks to improve performance over index based strategies by actively managing the rolling of WTI crude oil futures contracts.

The Shares will be offered by the Trust. According to the Exchange, the Trust is registered with the Commission as an open-end investment company.[10] ProShare Advisors LLC is the investment adviser (“Adviser”)[11] to the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78346 (July 15, 2016), 81 FR 47475.

[4] In Amendment No. 1, the Exchange clarified certain details regarding the holdings of the Fund, clarified a point regarding surveillance over futures contracts held by the Fund, and added details about the Fund.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 78643, 81 FR 59253 (August 29, 2016). The Commission designated October 19, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] In Amendment No. 2, the Exchange represented that: (1) All statements and representations made in the filing regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange; (2) the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements; (3) pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements; and (4) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12. Amendments No. 1 and No. 2 are available at: *https://www.sec.gov/comments/sr-batsbzx-2016-34/batsbzx201634.shtml.* Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment.

[8] The Commission notes that additional information regarding the Trust, the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Amendment No. 1 and the Registration Statement, as applicable. *See* Amendment No. 1, *supra* note 4, and Registration Statement, *infra* note 10.

[9] The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[10] The Exchange states that the Trust has filed a registration statement on behalf of the Fund with the Commission. *See* Registration Statement on Form N–1A for the Trust, dated May 3, 2016 (File Nos. 333–89822 and 811–21114) (“Registration Statement”). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (“1940 Act”). *See* Investment Company Act Release No. 30562 (June 18, 2013) (File No. 812–14041).

[11] The Exchange states that the Adviser has registered as a Commodity Pool Operator and will become a member of the National Futures

Fund and to the Subsidiary.[12] JPMorgan Chase Bank, National Association is the administrator, custodian, fund account agent, index receipt agent, and transfer agent for the Trust. SEI Investments Distribution Co. serves as the distributor for the Trust.

According to the Exchange, the Fund includes only those WTI crude oil contracts traded on the New York Mercantile Exchange and ICE Futures Europe ("WTI Crude Oil Futures"). The Fund's strategy seeks to improve performance over index based strategies by actively managing the rolling of WTI Crude Oil Futures (*e.g.*, selling a futures contract as it nears its expiration date and replacing it with a new futures contract that has a later expiration date). The Fund generally selects between front, second, and third month WTI Crude Oil Futures, based on an analysis of the liquidity and cost surrounding such positions.

The Fund generally will not invest directly in WTI Crude Oil Futures. The Fund expects to gain exposure to these investments by investing a portion of its assets in the Subsidiary.[13] The Fund will generally invest up to 25% of its total assets in the Subsidiary and, through such investment, generally remain fully exposed to WTI Crude Oil Futures, even during times of adverse market conditions. To achieve its investment objective, the Fund will, under Normal Market Conditions,[14] invest in: (i) WTI Crude Oil Futures; and (ii) Cash Assets (which are used to collateralize the WTI Crude Oil Futures), which will be held in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including US agency securities, shares of money market funds, certain variable rate-demand notes, and repurchase agreements collateralized by government securities).

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[18] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"), and the previous day's closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Also, daily trading volume information for the Fund will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

In addition, the Intraday Indicative Value[19] (as defined in BZX Rule 14.11(i)(3)(C)) will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[20] On each business day, before commencement of trading in the Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio WTI Crude Oil Futures and other assets ("Disclosed Portfolio")[21] that will form

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Association ("NFA"). The Exchange also states that the Fund and its wholly-owned subsidiary ("Subsidiary") will be subject to regulation by the Commodity Futures Trading Commission and NFA, as well as to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pool operators.

[12] The Exchange states that the Adviser is not a registered broker-dealer, but is currently affiliated with a broker-dealer, and, in the future may be affiliated with other broker-dealers. The Adviser has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[13] The Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, because of the Fund's ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund's Board of Trustees has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[14] As defined in Rule 14.11(i)(3)(E), the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[15] 26 U.S.C. 851.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] According to the Exchange, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio (as defined below). The Exchange states that quotations of certain of the Fund's holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours. The Exchange's Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[20] The Exchange notes that several major market data vendors display or make widely available Intraday Indicative Values published via the CTA or other data feeds.

[21] As defined in BZX Rule 14.11(i)(3)(B), the Disclosed Portfolio will include for each portfolio holding of the Fund and the Subsidiary, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective

Continued

the basis for the Fund's calculation of NAV at the end of the business day. The Web site for the Fund will also include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Intraday price quotations on cash equivalents of the type held by the Fund, with the exception of money market mutual funds, are available from major broker-dealer firms and from third parties, which may provide prices free with a time delay or "live" with a paid fee. For WTI Crude Oil Futures, such intraday information is available directly from the applicable listing exchange. Price information for money market fund shares will be available through issuer Web sites and publicly available quotation services such as Bloomberg, Markit, and Thomson Reuters.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to BZX Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in Shares of the Fund may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the WTI Crude Oil Futures and other assets composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[22] The Exchange represents that it prohibits the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is not a registered broker-dealer, but is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.[23]

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and that these surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange.[24] In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and that, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.[25]

The Commission notes that the Fund and the Shares must comply with the requirements of BZX Rule 14.11(i) to be initially and continuously listed and traded on the Exchange. The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to BZX Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[26]

(3) The Exchange may obtain information regarding trading in the Shares and the underlying futures via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine.[27]

(4) All of the futures contracts in the Disclosed Portfolio for the Fund will trade on markets that are a member or affiliate member of ISG or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement.[28]

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Exchange Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[29]

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will

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date, market value, and percentage weight of the holding in the portfolio. The Web site and information will be publicly available at no charge.

[22] *See* BZX Rule 14.11(i)(4)(B)(ii)(b).

[23] The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

[24] *See* Amendment No. 2, *supra* note 7.

[25] *See id.*

[26] *See* Amendment No. 1, *supra* note 4, at 19.

[27] *See id.* at 20.

[28] *See id.* at 20, n.17.

[29] *See* 17 CFR 240.10A–3.

consider taking appropriate steps to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(8) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the proposed rule change, as modified by Amendments No. 1 and No. 2. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act[30] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–34 and should be submitted on or before October 11, 2016.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendments No. 1 and No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. Amendment No. 1 supplements the proposed rule change by clarifying the Fund's holdings, surveillance, and general Fund details. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[31] to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[32] that the proposed rule change (SR–BatsBZX–2016–34), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22624 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

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[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of All Energy Corp., and As Seen On TV, Inc.; Order of Suspension of Trading

September 16, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of All Energy Corp. (CIK No. 1103384), a delinquent Delaware corporation with its principal place of business listed as Johnston, Iowa, with stock quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") under the ticker symbol AFSE, because it has not filed any periodic reports since the period ended September 30, 2014. On December 16, 2014, All Energy Corp. was sent a delinquency letter by the Division of Corporation Finance requesting compliance with its periodic filing obligations, and All Energy Corp. received the delinquency letter on December 22, 2014, but failed to cure its delinquencies.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of As Seen On TV, Inc. (CIK No. 1432967), a Florida corporation with its principal place of business listed as Austin, Texas, with stock quoted on OTC Link under the ticker symbol ASTV, because it has not filed any periodic reports since the period ended December 31, 2014. On December 9, 2015, As Seen On TV, Inc. was sent a delinquency letter by the Division of Corporation Finance requesting compliance with its periodic filing obligations, and As Seen On TV, Inc. received the delinquency letter on December 12, 2015, but failed to cure its delinquencies.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on September 16, 2016, through 11:59 p.m. EDT on September 29, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22731 Filed 9–16–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78836; File No. SR–FINRA–2016–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend Rule 12403 (Cases With Three Arbitrators) of the Code of Arbitration Procedure for Customer Disputes Relating to the Panel Selection Process in Arbitration

September 14, 2016.

I. Introduction

On July 1, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 12403 (Cases with Three Arbitrators) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") relating to the panel selection process in arbitration. The proposal was published for comment in the **Federal Register** on July 15, 2016.[3] The comment period closed on August 5, 2016. The Commission received eight (8) comment letters on the proposal.[4] On August 12, 2016, FINRA extended the time, until October 13, 2016, for Commission action on the proposal.[5] FINRA responded to the comment letters on August 18, 2016.[6] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA allows parties to participate in selecting the arbitrators who serve on their cases. Parties select their arbitration panel from computer generated lists of arbitrators that FINRA sends them. Under current FINRA Rule 12403(a), in customer cases with three arbitrators,[7] FINRA sends the parties three lists: a list of ten (10) chair-qualified public arbitrators, a list of ten (10) public arbitrators, and a list of ten (10) non-public arbitrators.[8] The parties select their panel through a process of striking and ranking the arbitrators on the lists.[9] Under current Rule 12403(c)(2), each party is allowed to strike up to four (4) arbitrators on the chair-qualified public list and four (4) arbitrators on the public list. At least six (6) names must remain on each list. However, Rule 12403(c)(1) provides for unlimited strikes on the non-public list so that any party may select a panel of all public arbitrators in a customer case.[10]

Under the Customer Code, when parties collectively strike all of the non-public arbitrators from the list, FINRA fills all three panel seats from the two 10-person lists of public arbitrators.[11] When parties collectively strike all of the arbitrators appearing on the non-public list, FINRA returns to the public list to select the next highest ranked available arbitrator to fill the seat.[12] If no public arbitrators remain available to fill the vacancy, FINRA returns to the chair-qualified public list to select the next highest ranked public chair.[13] In doing so, there is a likelihood that FINRA will appoint an arbitrator who the parties accepted, but ranked lower on the public or chair-qualified public lists.[14] FINRA believes that where parties collectively strike all the non-public arbitrators (*i.e.*, where they desire an all-public panel), the parties should have greater choice of public arbitrators.[15]

Consequently, FINRA is proposing to amend Rule 12403(a)(1) to increase the number of arbitrators on the public arbitrator list FINRA sends the parties from ten (10) to fifteen (15). FINRA believes this amendment would provide the parties with greater choice of public arbitrators during the panel selection process.[16]

FINRA is also proposing to amend Rule 12403(c)(2) to increase the number of strikes to the public arbitrator list from four (4) to six (6), so that the proportion of strikes is the same under the amended rule as it is under the current rule. FINRA believes that increasing the number of strikes the parties can make to the newly increased public list will improve the likelihood that the parties' preferred arbitrators will be appointed to the panel.[17]

III. Summary of Comments and FINRA's Response

The Commission received eight (8) comment letters on the proposed rule change,[18] and a response letter from FINRA.[19] As discussed in more detail below, six (6) commenters expressed support for the proposal as filed,[20] one (1) commenter generally supported the proposal while expressing additional concerns,[21] and one (1) commenter proposed an alternative approach for panel selection in customer cases.[22] The sections below outline the support, concerns raised and alternatives proposed by commenters, as well as FINRA's response.

Support for the Proposal

Six (6) commenters supported the proposed increase in the number of arbitrators on the public arbitrator list from ten (10) to fifteen (15), as well as the proportional increase from four (4) to six (6) strikes that parties may make to the public arbitrator list. These commenters stated, among other things, that the proposal would provide parties with a greater choice in the arbitrator selection process, increasing the likelihood that an arbitrator preferred by both parties would be appointed to the panel.[23] Consequently, these commenters generally believe that the proposed rule change "is a fair, equitable and reasonable approach[,]" [24] "is an important step towards protecting the investing public[,]" [25] "will greatly enhance the fairness of the forum to both the investing public and FINRA members[,]" [26] "results in more equitable arbitration proceedings," [27] and "benefits all parties, with a particularly positive impact on modest-means investors." [28]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78279 (July 11, 2016), 81 FR 46139 (July 15, 2016) (File No. SR–FINRA–2016–022) ("Notice").

[4] *See* Letter from Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated July 14, 2016 ("Caruso Letter"); Letter from Julius Z. Frager, J.D., M.B.A., dated July 24, 2016 ("Frager Letter"); Letter from Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated July 26, 2016 ("Bakhtiari Letter"); Letter from Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, dated July 27, 2016 ("Aidikoff Letter"); Letter from Hugh D. Berkson, President, Public Investors Arbitration Bar Association ("PIABA"), dated August 4, 2016 ("PIABA Letter"); Letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated August 4, 2016 ("FSI Letter"); Letter from Tyler M. Fiorillo, Student Intern, and Elissa Germaine, Supervising Attorney, Pace Investor Rights Clinic ("PIRC"), dated August 5, 2016 ("PIRC Letter"), and Letter from Glenn S. Gitomer, Chair of Litigation Practice Group, McCausland Keen Buckman, dated August 5, 2016 ("Gitomer Letter").

[5] *See* Letter from Margo A. Hassan, Associate Chief Counsel, Office of Dispute Resolution, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division of Trading and Markets, Securities and Exchange Commission, dated August 12, 2016.

[6] *See* Letter from Margo A. Hassan, Associate Chief Counsel, Office of Dispute Resolution, FINRA, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 18, 2016 ("FINRA Response Letter").

[7] *See* FINRA Rule 12401, which provides that if the amount of a claim is more than $100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

[8] Public arbitrators do not have an affiliation with the financial industry. The non-public arbitrator roster includes individuals who: (1) Are employed in the financial industry; (2) provide services to industry entities and their employees; or (3) devote a significant part of their business to representing or providing services to parties in disputes concerning investments or employment relationships. See Notice, 81 FR at 46139; *see also* Securities Exchange Act Release No 74383 (Feb. 26, 2014), 80 FR 11695 (Mar. 4, 2014) (File No. SR–FINRA–2014–028) (Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator).

[9] *See* FINRA Rule 12403(c).

[10] *See* Notice, 81 FR at 46139.

[11] *See* FINRA Rule 12403(d), (e).

[12] *See* FINRA Rule 12403(e).

[13] *Id.*

[14] *See* Notice, 81 FR at 46139.

[15] *Id.*

[16] *Id.* at 46139–40.

[17] *Id.* at 46140

[18] *See supra* note 4.

[19] *See supra* note 6.

[20] *See* Caruso Letter; Bakhtiari Letter; Aidikoff Letter; FSI Letter; PIRC Letter; Gitomer Letter.

[21] *See* PIABA Letter.

[22] *See* Frager Letter.

Additional Concerns

One (1) commenter generally supported the proposal, but also expressed concerns about other aspects of the arbitrator selection process.[29] Specifically, this commenter believes that FINRA should address the shortage of local arbitrators by intensifying its efforts to recruit suitable local individuals to serve as public and chair-qualified arbitrators, particularly in locations with shallow arbitrator pools.[30] In addition, this commenter recommends that FINRA increase the transparency of its list-selection process.[31]

In response, FINRA stated that it believes this commenter's suggestions are outside the scope of the proposal.[32] Therefore, FINRA did not address them in its response.[33]

Alternative Proposal

One (1) commenter did not directly oppose the proposal but did recommend that FINRA adopt an alternative approach for panel selection in customer cases. Among other things, this commenter suggested that FINRA maintain the three current ten-person lists of non-public, chair-public and public arbitrators. Each party could strike all of the names on the non-public list, and four names on each public list. Each party would then submit to FINRA one combined list of ranked chair-public and public arbitrators. FINRA would appoint the highest ranked chair-qualified arbitrator as chair. If the parties collectively struck all of the non-public arbitrators, FINRA would then appoint two public arbitrators from those remaining on the parties' combined list (regardless of whether they are chair-qualified).[34] The commenter believes that this proposal would benefit parties to an arbitration because, among other things, they would not need to vet the proposed additional five public arbitrators.[35]

In its response, FINRA stated that forum users generally prefer greater choice during the arbitrator selection process.[36] FINRA also stated that unlike the commenter's suggestion, the proposed rule change would provide parties greater choice by adding five (5) public arbitrators to the panel selection process.[37] In addition, FINRA believes that the commenter's approach to panel selection would be complex and difficult for parties to navigate, especially parties or party representatives that do not use the forum on a regular basis.[38] Accordingly, FINRA did not amend the proposal to reflect the commenter's recommended amendments.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposal, the comments received, and FINRA's response to the comments. Based on its review of the record, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[39] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[40] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes, and the Commission agrees, that the proposed rule change would protect investors and the public interest by providing greater choice for parties in customer cases with three arbitrators during the panel selection process.

As discussed above, the proposal would amend Rule 12403(a)(1) to increase the number of arbitrators on the public arbitrator list that FINRA sends the parties from ten (10) to fifteen (15).[41] It would also amend Rule 12403(c)(2) to increase the number of strikes to the public arbitrator list from four (4) to six (6), so that the proportion of strikes is the same under the amended rule as it is under the current rule.[42]

The Commission has considered the eight (8) comment letters received on the proposed rule change,[43] along with FINRA's response to the comments.[44] The Commission notes that most of the commenters support the proposed rule change, expressing the belief that the proposal would increase parties' choice among public arbitrators during the arbitrator selection process,[45] and thereby benefit parties in arbitration and enhance the fairness of the forum.[46] However, the Commission also recognizes commenters' concerns and suggestions.[47]

While the Commission acknowledges that FINRA's proposed amendments to Rule 12403 might result in an increased burden in vetting additional arbitrators, the Commission agrees with FINRA that parties would benefit from having greater choice in selecting public arbitrators, and that the benefits of this greater choice would outweigh the cost of additional vetting.[48] The Commission additionally agrees with FINRA's assessment that the proposed alternative arbitrator selection process suggested by one commenter [49] would not provide the benefit of greater choice and would unnecessarily complicate the arbitrator selection process.[50]

In addition, the Commission agrees with FINRA's assessment that the "shortage of local arbitrators" and the transparency of FINRA's arbitrator list-selection process [51] are outside the scope of the proposal.[52]

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

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[23] *See* Caruso Letter, Aidikoff Letter, FSI Letter, and PIRC Letter; *see also* Bakhtiari Letter, Gitmore Letter and PIABA Letter (stating that "having the ability to consider more candidates helps both claimants and respondents."

[24] *See* Caruso Letter; *see also* Aidikoff Letter and FSI Letter.

[25] *See* Bakhtiari Letter.

[26] *See* Gitomer Letter.

[27] *See* FSI Letter.

[28] *See* PIRC Letter.

[29] *See* PIABA Letter.

[30] *Id.*

[31] *Id.*

[32] *See* FINRA Response Letter.

[33] *Id.*

[34] *See* Frager Letter; *see also* FINRA Response Letter (describing the commenter's proposal).

[35] *See* Frager Letter.

[36] *See* FINRA Response Letter (stating that forum users have indicated that "the benefits of additional choice outweigh the cost of vetting additional arbitrators").

[37] *See* FINRA Response Letter.

[38] *Id.*

[39] In approving the proposed rule change, the Commission has also considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78o–3(b)(6).

[41] *See* Notice, 81 FR at 46139.

[42] *Id.*

[43] *See supra* note 4.

[44] *See supra* note 6.

[45] *See supra* note 23.

[46] *See supra* notes 24–28.

[47] *See* PIABA Letter and Frager Letter.

[48] *See* FINRA Response Letter.

[49] *See* Frager Letter.

[50] *See* FINRA Response Letter.

[51] *See* PIABA Letter.

[52] *See* FINRA Response Letter.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[53] that the proposed rule change (SR–FINRA–2016–022) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22535 Filed 9–19–16; 8:45 am]

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[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78838; File No. SR–BX–2016–050]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of Proposed Rule Change To Describe Changes to System Functionality Necessary To Implement the Tick Size Pilot Program

September 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt paragraph (d) to Exchange Rule 4770 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").[4] The Exchange is also proposing amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Exchange, Financial Industry Regulatory Authority, Inc. ("FINRA"), The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NASDAQ PHLX LLC, NYSE Arca, Inc., and the NYSE MKT LLC, (collectively "Participants"), filed the Plan with the Commission pursuant to Section 11A of the Act[5] and Rule 608 of Regulation NMS thereunder.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014,[9] and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[11] As described more fully below, the proposed rules would require members to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Plan will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "System" is defined as the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises: (1) A montage for Quotes and Orders, referred to herein as the "Exchange Book," that collects and ranks all Quotes and Orders submitted by Participants; (2) an Order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (3) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the national trade reporting system, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment; and (4) data feeds that can be used to display with attribution to Participants' MPIDs all Quotes and displayed Orders on both the bid and offer side of the market for all price levels then within the NASDAQ OMX BX Equities Market, and that disseminate such additional information about Quotes, Orders, and transactions within the System as shall be reflected in the Exchange Rules. *See* Rule 4701(a).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[5] 15 U.S.C. 78k–1.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[10] *See* Tick Plan Approval Order, *supra* note 4. *See also* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

[11] The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[17]

As noted above, the Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (c) of Rule 4770 to require members to comply with the quoting and trading provisions of the Plan. The Exchange also adopted paragraph (b) of Rule 4770 to require members to comply with the data collection provisions under Appendix B and C of the Plan.[18]

The Exchange is proposing to adopt paragraph (d) of Rule 4770 to describe the changes to System functionality necessary to implement the Plan and to amend certain rules under Rule 4770. As discussed below, certain of these proposed changes are intended to reduce risk in the System by eliminating unnecessary complexity or by eliminating functionality that would serve no purpose or meaningful benefit to the market. The Exchange believes that all of the proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations thereunder.

Proposed System Changes

Proposed paragraph (d) of Rule 4770 would set forth the Exchange's specific procedures for handling, executing, repricing, and displaying of certain Order Types[19] and Order Attributes[20] applicable to Pilot Securities. Unless otherwise indicated, paragraph (d) of Rule 4770 would apply to Order Types and Order Attributes in Pilot Securities in Test Groups One, Two, and Three and not to Pilot Securities included in the Control Group. The Exchange is proposing to adopt new Rule 4770(d)(1) to make it clear that it will not accept an Order in a Test Group Pilot Security that is not entered in the Pilot's minimum price increment of $0.05, applied to all Order Types that require a price and do not otherwise qualify for an exemption to the $0.05 minimum price increment required by the Plan. The Exchange is also clarifying under new Rule 4770(d)(1) that it will use the $0.05 minimum price increment when the System reprices an Order, including when it rounds a derived price up or down. Although not required by the Plan nor prohibited, the Exchange has determined to apply the Trade-at restrictions during the Pre-Market Hours and Post-Market Hours trading sessions,[21] in addition to the regular Market Hours trading session.[22] The Exchange believes that applying the same process and requirements in Test Group Three Pilot Securities will simplify processing of Orders by the Exchange, avoiding market participant confusion that may be caused by applying only some of the Plan requirements and not others during the different market sessions.

In determining the scope of the proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Plan, System complexity, and the usage of such Order Types and Order Attributes in Pilot Securities. The Exchange found that it can support nearly all Order Type and Order Attribute functionality;[23] however, as described in detail below, it must amend such functionality in a handful of cases to address the requirements of the Plan. Thus, in addition to the changes of broad application discussed above, the Exchange is proposing the following select and discrete amendments to the operation of the following Order Types and Order Attributes, as discussed in detail below: (i) Price to Comply Orders;[24] (ii) Non-Displayed Orders;[25] (iii) Post-Only Orders;[26] (iv) Retail Price Improving Order;[27] (v) Retail Order;[28] (vi) Market Maker Peg Orders;[29] (vii) Midpoint Pegging;[30] (viii) Reserve Size;[31] and (ix) Good-till-Cancelled.[32]

The Exchange is also proposing to amend existing rules under Rule 4770 to clarify the operation of the Plan on the Exchange. Specifically, the Exchange is proposing to amend Rule 4770(a)(1)(D)(ii), which defines the term "Trade-at Intermarket Sweep Order," and Rule 4770(c)(3)(D)(iii)j, which describes an exception to the Trade-at prohibition of the Plan involving the use of Trade-at Intermarket Sweep Orders, as described in detail below.

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[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Section VII of the Plan.

[18] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[19] An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* Rule 4701(e).

[20] An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *Id.*

[21] As used in this proposal, the term "Market Hours" means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). The term "Pre-Market Hours" means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET. *See* Rule 4701(g).

[22] Regular Trading Hours is defined by the Plan as having the same meaning as Rule 600(b)(64) of Regulation NMS.

[23] As discussed below, the Exchange cannot support Supplemental Orders in Test Group Three Pilot Securities.

[24] *See* Rule 4702(b)(1).

[25] *See* Rule 4702(b)(3).

[26] *See* Rule 4702(b)(4).

[27] *See* Rule 4702(b)(5).

[28] *See* Rule 4702(b)(6).

[29] *See* Rule 4702(b)(7).

[30] *See* Rule 4703(d).

[31] *See* Rule 4703(h).

[32] *See* Rule 4703(a)(3).

Lastly, the Exchange is proposing to adopt new Commentary .12 to Rule 4770 to describe what qualifies as a Block Order for purposes of the Trade-at exception under Rule 4770(c)(3)(D)(iii).

Price To Comply Orders

The Price to Comply Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by having its price and display characteristics adjusted to avoid the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. The System does not have a "plain vanilla" limit order that attempts to execute at its limit price and is then posted at its price or rejected if it cannot be posted; rather, the Price to Comply Order, with its price and display adjustment features, is one of the primary Order Types used by Participants to access and display liquidity in the System. The price and display adjustment features of the Order Type enhance efficiency and investor protection by offering an Order Type that first attempts to access available liquidity and then to post the remainder of the Order at prices that are designed to maximize their opportunities for execution.

When a Price to Comply Order is entered by a market participant, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).[33]

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Exchange Book at a price equal to or better than the price of the Protected Quotation, the Price to Comply Order will be displayed on the Exchange Book at a price one minimum price increment below the current Best Offer (for a Price to Comply Order to buy) or above the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price to Comply Order to sell). The posted Order will then be available for execution at its non-displayed price, thus providing opportunities for price improvement to incoming Orders.

A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except the Exchange is proposing to change how it handles a Price to Comply Order in a Test Group Three Pilot Security to ensure that it conforms with the Trade-at prohibition of the Plan. First, the Exchange is proposing that if the Exchange received a Price to Comply Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. Second, if the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the Order will display at one minimum price increment below (above) the Protected Quotation, and the order will be added to the Exchange Book at the midpoint of the order's displayed price and the National Best Offer (National Best Bid).[34] Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. Due to the Trade-at requirement of Test Group Three Pilot Securities, the Exchange is also proposing to adjust such Orders repeatedly towards the limit price of the order in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.[35]

Non-Displayed Orders

A Non-Displayed Order is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Exchange Book. Thus, "Non-Display" is both a specific Order Type and an Order Attribute of certain other Order Types.

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Exchange Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable. During Market Hours, if the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Exchange Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Exchange Book at that price.

To avoid possible execution of a Non-Displayed Order at the Protected Quote on the Exchange in a Test Group Three Pilot Security, the Exchange is proposing to not allow execution of a Non-Displayed Order in a Test Group Three Pilot Security at the price of a Protected Quotation unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition. If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three security would lock or cross a Protected Quotation of another Market Center, the Order will be added to the Exchange Book at either one minimum price increment ($0.05) below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. After posting and if conditions allow, such an Order will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.[36]

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[33] *See* Rules 4703(f) and 4758.

[34] When the market is locked, the price and display logic for Orders that would lock or cross an away market is slightly different. Display Orders at the locking price will post at the locking price if there are other Orders already posted on BX at that price (*i.e.*, BX is part of the locked market). Otherwise, the order will post at one minimum price increment away from the locking price. Non-Displayed orders received when the market is locked will always post one minimum price increment away from the locking price.

[35] The repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 4756(a)(4).

The Exchange is proposing a change to how a Non-Displayed Order in a Test Group Three Pilot Security would be treated to comply with the Trade-at requirement. Currently, for a Non-Displayed Order that is entered through a RASH or FIX port, if, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp. For a Non-Displayed Order entered through OUCH or FLITE, if, after the Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the Participant. The Exchange is proposing to trigger repricing of a Non-Displayed Order in a Test Group Three Pilot Security if the Order would lock or cross a Protected Quotation by posting the Order to the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus, the Order is repriced to avoid execution at the Protected Quotation, but may also receive price improvement. If market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, if the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant. A posted order is no longer eligible to execute at its posted price under three distinct scenarios. First, in Test Group Pilot Securities, if the NBBO moves such that the posted Order's price crosses a protected quotation, it is no longer executable due to the trade through prohibition under Regulation NMS (this is current functionality). Second, in Test Group Three Pilot Securities, if a Non-Displayed Order is posted at the midpoint and the NBBO moves such that its posted price is no longer a valid increment, the Order will be adjusted as described above. For example, if the NBB is $10.00 and the NBO is $10.05 in a Test Group Three Pilot Security, and a Non-Displayed Order to buy 100 shares of the security with a limit price of $10.05 is received by the System, the Order would be repriced and posted at $10.025 (the midpoint of the NBBO) to avoid locking the market. If subsequently the NBB changes to $9.95 and the NBO to $10.05, then the Order would no longer be eligible for the midpoint exception to the Plan's minimum price increment requirement and therefore would be adjusted and/or cancelled as described above. Third, in Test Group Three Pilot Securities, if the NBBO moves such that the Order's posted price locks a protected quotation, it is no longer executable due to the Trade-at prohibition under the Plan and would be adjusted and/or cancelled as described above.

Post-Only Orders

A Post-Only Order is an Order Type designed to have its price adjusted as needed to post to the Exchange Book in compliance with Rule 610(d) under Regulation NMS[37] by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order.

Post-Only Orders in Test Group Pilot Securities will operate as described under Rule 4702(b)(4), however, the Exchange is proposing changes to the handling of a Post-Only Order in Test Group Three Pilot Securities to ensure that the Trade-at prohibition is enforced. Specifically, the Exchange is proposing to modify how a Post-Only Order in a Test Group Three Pilot Security is handled if it locks or crosses the Protected Quotation of another market center. If the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. Thereafter and if market conditions allow, the Post-Only Order will be adjusted repeatedly towards its limit price in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable, until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.[38]

Retail Price Improving Order

A Retail Price Improving Order or "RPI Order" is an Order Type with a Non-Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least $0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of $0.001. RPI Orders collectively may be referred to as "RPI Interest." An RPI Order will be posted to the Exchange Book regardless of its price, but an RPI Order may execute only against a Retail Order, and only if its price is at least $0.001 better than the NBBO.

A Retail Price Improving Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(5) except as provided under this paragraph. A Retail Price Improving Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment of $0.005 and will only execute against Retail Orders if its price is at least $0.005 better than the NBBO.

Retail Order

A Retail Order is an Order Type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA

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[36] The repricing of Non-Displayed Orders in Test Group Three Pilot Securities in accordance with changes to the NBBO up (down) to the Order's limit price are not subject to the limitations on Order updates, as described in Rule 4756(a)(4).

[37] 17 CFR 242.610(d).

[38] As discussed above, repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 4756(a)(4). *Supra* note 35.

Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. A Retail Order may be designated as either a Type-1 Retail Order or a Type-2 Retail Order. Upon entry, a Type-1 Retail Order will attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-1 Retail Order and (ii) at least $0.001 better than the NBBO. A Type-1 Retail Order is not Routable and will thereafter be cancelled.

A Retail Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(6) except in the following two circumstances. First, a Retail Order in a Test Group One Pilot Security must be entered with a limit price in a minimum price increment ($0.05), to comply with the Plan's minimum price increment requirement, and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least $0.001 better than the NBBO, which is the case today under the Retail Price Improvement Program. Second, a Retail Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment ($0.05), to comply with the Plan's minimum price increment requirement, and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least $0.005 better than the NBB or NBO. Test Group Two and Three Pilot Securities are subject to the Plan's minimum price increment requirement for both quoting and trading, however, Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the NBBO or NBO.

Midpoint Peg Post-Only Orders

A "Midpoint Peg Post-Only Order" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the party entering the Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the Exchange Book. The Midpoint Peg Post-Only Order is available during Market Hours only.

The Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that Midpoint Peg Post-Only Orders in any of the Test Group Pilot Securities may execute in an increment other than the minimum price increment of the Plan.

Market Maker Peg Orders

A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).[39] The price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current Best Bid (Best Offer) (including BX), or if no such Best Bid or Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.*, dividends or stock splits) in the security.

Upon entry, the price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would be $9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the Exchange Book, its price is adjusted if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the price of the Market Maker Peg Order and the Reference Price reaches the Defined Limit (as defined in Rule 4613), the price of a Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the Best Bid increased to $10.17, such that the price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to $9.35, or 8% away from the Best Bid. Note that calculated prices of less than the minimum increment will be rounded in a manner that ensures that the posted price will be set at a level that complies with the percentages stipulated by this rule. If the limit price of the Order is outside the Defined Limit, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the price of a Market Maker Peg Order to buy (sell) is within one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the price of the Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would initially be $9.20. If the Best Bid then moved to $9.57, such that the price of the Market Maker Peg Order would be a minimum of $0.01 more than a price that is 4% less than the Best Bid, rounded up (*i.e.* $9.57 − ($9.57 × 0.04) = $9.1872, rounding up to $9.19), the Order will be repriced to $8.81, or 8% away from the Best Bid.

A Market Maker may enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but such an offset will be expressed as a price difference from the Reference Price. Such a Market Maker Peg Order will be repriced in the same manner as a Price to Display Order with Attribution and Primary Pegging. As a result, the price of the Order will be adjusted whenever the price to which the Order is pegged is changed.

A new timestamp is created for a Market Maker Peg Order each time that its price is adjusted. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled or rejected. If, after entry, a Market Maker Peg Order is priced based on a Reference Price other than the NBBO and such Market Maker Peg Order is established as the Best Bid or Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until a new Reference Price is established.

In light of the minimum price increment requirement of the Plan, the

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[39] As with other Order Types, the Market Maker Peg Order must be an Order either to buy or to sell; thus, at least two Orders would be required to maintain a two-sided quotation.

Exchange is proposing to require the displayed price of a Market Maker Peg Order in a Test Group One, Two or Three Pilot Security to be rounded up (down) to the nearest minimum price increment for bids (offers), if it would otherwise display at an increment smaller than minimum price increment. For example, if the NBB is $10.05 and the NBO is $10.15, and the Designated Percentage is 28%, the displayed price of a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security would be $7.25 (*i.e.* $10.05 − ($10.05 × 0.28) = $7.236, rounded up to $7.25). Using the same market, but with a Market Maker Peg Order to sell 100 shares, the Order would be displayed at $12.95 (*i.e.* $10.15 + ($10.15 × 0.28) = $12.992, rounded down to $12.95). Thus, the rounding done to derive the price of the Market Maker Peg Order in a Test Group Pilot Security will conform to the minimum price increment requirement of the Plan.

As a consequence of conforming the Market Maker Peg Order to the minimum price increment of the Plan, a Market Maker Peg Order may have a higher likelihood of execution, particularly in lower priced securities. For example, if a member entered a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security with a limit price of $1.70 when the NBB is $1.60 and the NBO is $1.65, if the security is a Tier 2 security, the Order would be pegged at 28% from the NBB, which is $1.20 ($1.60 × .72 = $1.152 which rounds up to $1.20). If the market subsequently moves downward to a NBB of $1.20 and NBO of $1.30, the buy Market Maker Peg Order would not reprice because it had not reached one minimum price increment more than a price that is 4% less than the NBB (*i.e.*, $1.20 × .96 = $1.152, which rounds up to $1.20 and which is not greater than the NBB + $0.05). Thus, the Market Maker Peg Order may receive an execution prior to reaching a point at which it would reprice. This increased likelihood of execution of Market Maker Peg Orders would occur in any Order in a Test Group Pilot Security with a price less than $1.25.

Midpoint Pegging

Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

As discussed above, the Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that an Order in a Test Group Pilot Security with Midpoint Pegging may execute in an increment other than the minimum price increment of the Plan.

Reserve Size

Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the System will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the level stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the Exchange Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non-Displayed Order of 3,000 and the 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non-Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by the Exchange will show the execution and decrementation of the Displayed Order, followed by replenishment of the Displayed Order.

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

The Exchange is proposing to not allow a resting order in a Test Group Three Pilot Security with a Reserve Size to execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the Exchange received a Reserve Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is not attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the displayed portion of the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the displayed portion of the Order will be adjusted and displayed at one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). If after being posted to the Exchange Book, the NBBO changes so that the Reserve Order, if it is not attributable, would lock or cross a Protected Quotation, the displayed portion of the Reserve Order will display one minimum price increment below (above) the Protected Quotation, and the Order will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid).[40] If after being posted to the Exchange Book, the NBBO changes so that the Reserve Order in a Test Group Three Pilot Security, if it is attributable, would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the displayed portion of the Reserve Order will be adjusted and display one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would continue to comply with the Trade-at requirement by avoiding potential execution at a prohibited price.

Good-Till-Cancelled

Good-till-Cancelled is a Time-in-Force Order Attribute that is designated to deactivate one year after entry. Under certain circumstances at the election of the member, an Order designated as Good-till-Cancelled must be adjusted to account for corporate actions related to a dividend, payment or distribution. Rule 4761(b) sets forth the circumstances and method by which an Order designated as Good-till-Cancelled is adjusted. The Exchange is making it clear that an order in a Test Group Pilot Security with a Good-till-Cancelled Time-in-Force that is adjusted pursuant to Rule 4761(b) will be adjusted based on a $0.05 increment.

Rule 4770(a) and (c) Changes

Rule 4770(a) provides definitions of terms used under the Rule. Rule 4770(a) defines the term "Trade-at Intermarket Sweep Order" as "a limit order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders." Rule 4770(c)(3)(D)(iii)j. provides an exception to the Trade-at prohibition, requiring that, to satisfy the exception, the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at.

The Exchange is proposing to amend paragraph (ii) of Rule 4770(a) and Rule 4770(c)(3)(D)(iii)j. to allow the Exchange to use Intermarket Sweep Orders in lieu of Trade-at Intermarket Sweep Orders, when it is in receipt of an Order from a member that would trade through a protected price on another market. An Intermarket Sweep Order or "ISO" is an Order Attribute that allows the Order to be executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) under Regulation NMS. ISOs are immediately executable within the System against Orders against which they are marketable.

For purposes of the Exchange's satisfaction of the Trade-at Intermarket Sweep Order exception to the Trade-at prohibition of Test Group Three Pilot Securities, the ISO Order will operate functionally identically to the use of a Trade-at Intermarket Sweep Order. Intermarket Sweep Orders are sent by the exchange to execute against displayed size represented in away market centers' Protected Quotation and thus provide the same function as a Trade-at Intermarket Sweep Order because either order type would execute against the displayed portion of the away market centers' liquidity. The Exchange's routing broker is currently programmed to accept and route ISO Orders and adding an additional functionality to support routing of Trade-at Intermarket Sweep Orders would add complexity to the process with no functional benefit. Accordingly, the Exchange is proposing to use ISOs when routing Orders to satisfy the exception to the Trade-at prohibition.

New Commentary .12

The Exchange is proposing to adopt a new Commentary .12 to Rule 4770 to clarify what qualifies as a Block Order for purposes of the Block Size exception to the Trade-at prohibition. Rule 4770(c)(3)(D)(iii)c. provides an exception to the Trade-at prohibition for an Order that is of Block Size at the time of origin and is not an aggregation of non-block Orders, broken into Orders smaller than Block Size prior to submitting the Order to a Trading Center for execution, or is executed on multiple Trading Centers. The Plan defines Block Size as an Order of at least 5,000 shares or for a quantity of stock having a market value of at least $100,000. The Exchange has assessed the technological complexity and effort required to change the System to identify the market value of a quantity of stock and found that it would be exceedingly burdensome and complex without any clear benefit to the Exchange, its members, and the marketplace as a whole. As a consequence, the Exchange is proposing to only allow Orders that have a minimum size of 5,000 shares to qualify as Block Size for purposes of the exception provided by Rule 4770(c)(3)(D)(iii)c. and will only execute if the execution in aggregate is at least 5,000 shares.

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[40] Both a Price to Comply Order and a Price to Display Order with a Reserve Attribute would be repriced pursuant to Reserve Order process described in proposed Rule 4770(d)(9). A Price to Display Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, and are available solely to Participants that are Market Makers. *See* Rule 4702(b)(2).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it allows the Exchange to make changes to its handling of Order Types and Order Attributes necessary to implement the requirements of the Plan on its System. The Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[43] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

The Exchange is a Participant under the Plan and is subject to the Plan's provisions. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan, which otherwise may occur given existing System functionality. The proposal would also help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–050, and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22537 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

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[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] 15 U.S.C. 78k–1.

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 155; SEC File No. 270–492; OMB Control No. 3235–0549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 155 (17 CFR 230.155) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides safe harbors for a registered offering of securities following an abandoned private offering, or a private offering following an abandoned a registered offering, without integrating the registered and private offerings in either case. In connection with registered offering following an abandoned private offering, Rule 155 requires an issuer to include in any prospectus filed as a part of a registration statement disclosure regarding the abandoned private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning the withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. All information submitted to the Commission is available to the public for review. Companies only need to satisfy the Rule 155 information requirements if they wish to take advantage of the rule's safe harbors. The Rule 155 information is required only on occasion. We estimate Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents annually. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the filer for a total annual reporting burden of 1,200 hours (2 hours per response × 600 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 14, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22543 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78846; File No. SR–ICC–2016–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Revise the ICC Risk Management Model Description Document and the ICC Risk Management Framework

September 15, 2016.

On July 15, 2016, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ICC Risk Management Framework to incorporate certain risk model enhancements. ICC also proposed minor clarifying edits to the ICC Risk Management Model Description document and the ICC Risk Management Framework (File No. SR–ICC–2016–010). The proposed rule change was published for comment in the **Federal Register** on August 4, 2016.[3] To date, the Commission has not received comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is September 18, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. ICC's proposed rule change would modify the ICC Risk Management Framework. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider ICC's proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 2, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ICC–2016–010).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22623 Filed 9–19–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–78448 (July 29, 2016), 81 FR 51532 (Aug. 4, 2016) (SR–ICC–2016–010).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Fourth Meeting of SC–217 Aeronautical Databases

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Twenty Seventh Meeting of the SC–217 Aeronautical Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twenty Seventh Meeting of SC–217 Aeronautical Databases.

DATES: The meeting will be held November 29 to December 2, 2016, 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: 202 Burlington Road, Bedford, MA 01730–1420.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or (202) 330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty

Seventh Meeting of SC–217 Aeronautical Databases. The agenda will include the following:

Monday, November 28th

Working Session

For those able to attend, a working group session will be held to progress on action items ahead of the plenary.

Tuesday, November 29th (9:00 a.m.–11:00 a.m.)

Opening Plenary Session

1. Co-Chairmen's remarks and introductions
2. Housekeeping
3. Approve minutes from 26th meeting
4. Review and approve meeting agenda for 27th meeting
5. Action item list review
6. Presentations (TBD)
   a. Status of EASA PBN IR

Tuesday, November 29th (11:00 a.m.) through Thursday, December 1st (5:00 p.m.)

Working Group Sessions

1. Sub-team report-outs
   - Document structure
   - Background/PBN principles
   - Data preparation rules
   - Data quality
   - Procedure encoding
   - Aeronautical information basics
2. Draft of requirements tables based on data catalog
3. Review of action item inputs
   a. Working Papers
   b. Discussion Papers
   c. Information Papers
4. New business

Friday December 2nd (9:00 a.m.–12:00 p.m.)

Closing Plenary session

Meeting wrap-up: main conclusions and way forward
Review of action items
Next meetings
Any other business

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 15, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–22556 Filed 9–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0098; Notice 1]

General Motors LLC, Receipt of Petition To Amend Takata DIR Schedule

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Receipt of petition.

SUMMARY: General Motors, LLC (GM) has petitioned the Agency to alter the Part 573 defect information report (DIR) filing schedule set forth in paragraph 14 of the May 4, 2016 Amendment to November 3, 2015 Consent Order between NHTSA and TK Holdings Inc. ("Takata"). More specifically, GM has requested that NHTSA modify the DIR schedule with respect to certain GM-branded motor vehicles from December 31, 2016 to December 31, 2017.

DATES: The closing date for comments on the petition is October 4, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments regarding this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by one of the following methods:

- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Facsimile:* (202) 493–2251.

You may call the Docket at (202) 366–9324.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Thus, submitting such information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy and Security Notice" link in the footer of *http://www.regulations.gov.* DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. Comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

On May 4, 2016, NHTSA issued, and Takata agreed to, an Amendment to the November 3, 2015 Consent Order (the "Amendment"), under which Takata is bound to declare a defect in all driver and passenger inflators that contain an ammonium nitrate-based propellant and do not contain a moisture-absorbing desiccant. Such defect declarations are to be made on a rolling basis. *See* Amendment at ¶ 14. Takata timely submitted the first scheduled DIR on May 16, 2016. The next DIR is due to be filed on December 31, 2016, and is expected to include passenger inflators installed as original equipment on certain motor vehicles manufactured by GM (the "covered passenger inflators").

The Amendment sets forth the following procedure under which the DIR schedule may be modified or amended:

> Based on the presentation of additional test data, analysis, or other relevant and appropriate evidence, by Takata, an automobile manufacturer, or any other credible source, NHTSA may, after consultation with Takata, alter the schedule set forth in Paragraph 14 to modify or amend a DIR or to defer certain inflator types or vehicles, or a portion thereof, to a later DIR filing date. Any such evidence must be submitted to NHTSA no later than one-hundred-twenty (120) days before the relevant DIR filing date. This paragraph applies only to the DIRs scheduled to be issued on or after December 31, 2016 under the schedule established by Paragraph 14 of this Amendment.

See Amendment at ¶ 17. On July 22, 2016, NHTSA issued Enforcement Guidance Bulletin 2016–03 to inform the public of the process and procedure the Agency had established in connection with Paragraph 17 of the Amendment, as well as the standards and criteria that would guide Agency decision-making. *See* 81 FR 47854.

On September 2, 2016, GM filed a petition pursuant to Paragraph 17 of the Amendment and Enforcement Guidance Bulletin 2016–03. Therein, GM has requested that NHTSA modify the DIR schedule to delay the inclusion of covered GM passenger-side inflators from December 31, 2016 to December 31, 2017. This notice of receipt of GM's petition is published in accordance with Enforcement Guidance Bulletin 2016–03 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Class of Motor Vehicles Involved

GM's petition involves certain GMT900 vehicles that contain the covered passenger inflators (designated as inflator types "SPI YP" and "PSPI–L YD"). GMT900 is a GM-specific vehicle platform that forms the structural foundation for a variety of GM trucks and sport utility vehicles, including: Chevrolet Silverado 1500, GMC Sierra 1500, Chevrolet Silverado 2500/3500, GMC Sierra 2500/3500, Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, GMC Yukon, GMC Yukon XL, Cadillac Escalade, Cadillac Escalade ESV, and Cadillac Escalade EXT.

The next Takata DIR, which is due to be filed on December 31, 2016, is expected to include the following GMT900 vehicles:

- In Zone A, model year 2012 GMT900 vehicles. Zone A comprises the following states and U.S. territories: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. *See* Amendment at ¶ 7.a.
- In Zone B, certain model year 2009 GMT900 vehicles. Zone B comprises the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. *See* Amendment at ¶ 7.b.
- In Zone C, certain model year 2007 and 2008 GMT900 vehicles. Zone C comprises the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

III. Summary of GM's Petition

GM's petition states its belief that the requested modification to the DIR schedule will not pose an unreasonable risk to motor vehicle safety. In support of this contention, GM states that it has studied the long-term performance of the covered passenger inflators and has conducted an analysis of the ballistic performance of the covered passenger inflators. Based upon this analysis, GM states that the covered passenger inflators are not currently at risk of rupture. According to the petition, GM's position is based upon the following: An estimated 44,000 Takata passenger inflator deployments in GMT900 vehicles without a rupture; ballistic tests of 1055 covered passenger inflators without a rupture or sign of abnormal deployment; deployment of 12 inflators artificially exposed to additional humidity and temperature cycling without a rupture or sign of abnormal deployment; and analysis, through stress-strength interference, indicating that the propellant in older covered passenger inflators has not degraded to a sufficient degree to create rupture risk.

GM further states that the covered passenger inflators are not used by any other original equipment manufacturer and have a number of unique design features that influence burn rates and internal ballistic dynamics, including greater vent-area-to-propellant-mass ratios, steel end caps, and thinner propellant wafers. In addition, GM states that the physical environment of the GMT900 vehicles better protects the covered passenger inflators from the temperature cycling that can cause rupture. More specifically, GM notes that the GMT900 vehicles have larger interior volumes than smaller passenger cars, and are equipped with solar-absorbing windshields and side glass.

Finally, GM states that it has retained a third-party expert to conduct a long-term aging study that will estimate the service life expectancy of the covered passenger inflators in the GMT900 vehicles. GM anticipates that this study will be complete in August 2017.

For these reasons, GM requests that NHTSA amend the DIR schedule pursuant to Paragraph 17 of the Amendment to delay the inclusion of the covered passenger inflators until the December 31, 2017 DIR filing.

Authority: 49 U.S.C. 30101, *et seq.*, 30118, 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 CFR 1.95(a).

Issued: September 15, 2016.

Michael Brown,

Acting Director, Office of Defects Investigation.

[FR Doc. 2016–22631 Filed 9–16–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 2 individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: OFAC's actions described in this notice were effective on September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On September 15, 2016, OFAC blocked the property and interests in property of the following 2 individuals pursuant to E.O. 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism":

Individuals

1. JAMOUS, Hussam (a.k.a. AL-JAMUS, Umar; a.k.a. DA JAMOUS, Hussam; a.k.a. KHATTAB, Omar), Antakya, Hatay, Turkey; DOB 08 Jan 1983; alt. DOB 01 Aug 1983; Passport N006951090 (Syria); National ID No. 00413L0105232 (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

2. ALHMIDAN, Mohamad Alsaied (a.k.a. AL HAMIDAN, Mohamad Alsaied; a.k.a. ALHEMEDAN, Mohamad Alsaeed; a.k.a. ALHMEDAN, Mohamad Alsaeed; a.k.a. ALHMIDAN, Mohamad; a.k.a. ALUOALII, Mohamad; a.k.a. ALWAKIE, Mohamad; a.k.a. AYSSA,

Walid), Turkey; DOB 20 Feb 1976; alt. DOB 13 Feb 1975; alt. DOB 07 Jan 1977; alt. DOB 15 Feb 1976; Passport N010084435 (Syria); Identification Number N002595610 (Syria); alt. Identification Number 00407L012704 (Syria); alt. Identification Number N0097000224 (Syria); alt. Identification Number L07521 (Syria); (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Dated: September 15, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–22607 Filed 9–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the United Furniture Workers Pension Fund A (UFW Pension Fund), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the UFW Pension Fund has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the UFW Pension Fund.

DATES: Comments must be received by November 4, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the UFW Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On August 17, 2016, the Board of Trustees of the UFW Pension Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at *https://auth.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with the PBGC and the Department of Labor, to solicit public comments on all aspects of the UFW Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the UFW Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: September 15, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–22728 Filed 9–16–16; 4:15 pm]

BILLING CODE 4810–25–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 182 September 20, 2016

Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2016–BT–TP–0002]

RIN 1904–AD66

Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish new definitions, a new test procedure for dedicated-purpose pool pumps, new sampling and rating requirements, and new enforcement provisions for such equipment. Specifically, DOE proposes a test procedure for measuring the weighted energy factor (WEF) for certain varieties of dedicated-purpose pool pumps. The proposed test method incorporates by reference certain sections of the industry test standard Hydraulic Institute (HI) 40.6–2014, "Methods for Rotodynamic Pump Efficiency Testing." The proposed definitions, test procedures, certification requirements, enforcement testing procedures, and labeling provisions are based on the recommendations of the dedicated-purpose pool pump (DPPP) Working Group, which was established under the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC).

DATES: DOE will hold a public meeting on Monday, September 26, 2016 from 10:00 a.m. to 2:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than November 21, 2016. See section V, "Public Participation," for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 4A–104, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify the Appliance and Equipment Standards staff at (202) 586–6636 or *Appliance_Standards_Public_Meetings@ee.doe.gov*.

Any comments submitted must identify the Test Procedure NOPR for dedicated-purpose pool pumps, and provide docket number EERE–2016–BT–TP–0002 and/or regulatory information number (RIN) number 1904–AD66. Comments may be submitted using any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: DPPP2016TP0002@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

(3) *Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

(4) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document ("Public Participation").

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *regulations.gov.* All documents in the docket are listed in the *regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=67.* This Web page will contain a link to the docket for this document on the *regulations.gov* site. The *regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *ashley.armstrong@ee.doe.gov.*

Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Jochum@ee.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to update the incorporation by reference or newly incorporate by reference the following industry standards into 10 CFR part 431:

(1) Hydraulic Institute (HI) 40.6–2014, ("HI 40.6–2014") "Methods for Rotodynamic Pump Efficiency Testing," except for section 40.6.4.1, "Vertically suspended pumps"; section 40.6.4.2, "Submersible pumps"; section 40.6.5.3, "Test report"; section 40.6.5.5.2, "Speed of rotation during testing"; section 40.6.6.1, "Translation of test results to rated speed of rotation"; Appendix A, section A.7, "Testing at temperatures exceeding 30 °C (86 °F)"; and Appendix B, "Reporting of test results (normative)" copyright 2014.

Copies of HI 40.6–2014 can be obtained from: the Hydraulic Institute at 6 Campus Drive, First Floor North, Parsippany, NJ 07054–4406, (973) 267–9700, or by visiting *www.pumps.org.*

(2) UL 1081, ("ANSI/UL 1081–2014"), "Standard for Swimming Pool Pumps, Filters, and Chlorinators," 6th Edition, January 29, 2008, including revisions through March 18, 2014.

Copies of American National Standards Institute (ANSI)/UL 1081–2014 can be obtained from: UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or by visiting *http://ul.com.*

(3) National Electrical Manufacturers Association (NEMA) MG–1 2014, "Motors and Generators," 2014, section 1.19, "Polyphase Motors"; section 10.34, "Basis of Horsepower Rating"; section 10.62, "Horsepower, Speed, and Voltage Ratings"; 12.30, "Test Methods"; section 12.35, "Locked-Rotor Current of 3-Phase 60-Hz Small and Medium Squirrel-Cage Induction Motors Rated at 230 Volts"; section 12.37, "Torque Characteristics of Polyphase Small Motors"; 12.38, "Locked-Rotor Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings"; section 12.39, "Breakdown Torque of Single-speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings"; and

section 12.40, "Pull-Up Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings."

Copies of NEMA MG–1–2014 can be obtained from: NEMA, 1300 North 17th Street, Suite 900, Rosslyn, VA 22209, (703) 841–3200, or by visiting *www.nema.org.*

(4) NSF International (NSF)/ANSI Standard 50–2015, ("NSF/ANSI 50–2015"), "Equipment for Swimming Pools, Spas, hot Tubs and Other Recreational Water Facilities," approved January 26, 2015, section C.3, "self-priming capability," of Annex C, "Test methods for the evaluation of centrifugal pumps."

Copies of NSF/ANSI 50–2015 can be obtained from: NSF International, 789 N. Dixboro Road, Ann Arbor, MI 48105, (743) 769–8010, or by visiting *www.nsf.org.*

Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–6636, or go to *www1.eere.energy.gov/buildings/appliance_standards/.*

See section IV.N for additional information on these standards.

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I. Authority and Background

Pumps are included in the list of "covered equipment" for which the U.S. Department of Energy (DOE) is authorized to establish and amend energy conservation standards (ECSs) and test procedures (TPs). (42 U.S.C. 6311(1)(A)) Dedicated-purpose pool pumps (DPPP), which are the subject of this rulemaking, are a subset of pumps and, thus, DOE is authorized to establish test procedures and energy conservation standards for them. Recently, DOE published in the **Federal Register** two final rules establishing new energy conservation standards and a test procedure for commercial and industrial pumps. 81 FR 4368 (Jan. 26, 2016) and 81 FR 4086 (January 25, 2016), respectively. However, dedicated-purpose pool pumps were specifically excluded from those final rules because, based on recommendations of the industry and DOE's own analysis, DOE determined that dedicated-purpose pool pumps have a unique application and equipment characteristics that merit a separate analysis. As a result, there currently are no Federal energy conservation standards or a test procedure for dedicated-purpose pool pumps. The following sections discuss DOE's authority to establish a test procedure for dedicated-purpose pool pumps and relevant background information regarding DOE's consideration of establishing Federal regulations for this equipment.

A. Authority

The Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163, as amended by Public Law 95–619, Title IV, Sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment under Title III, Part C (42 U.S.C. 6311–6317, as codified).[1] [2] "Pumps" are listed as a type of industrial equipment covered by EPCA, although EPCA does not define the term "pump." (42 U.S.C. 6311(1)(A)) To address this issue, DOE defined "pump" in a test procedure final rule (January 2016 general pumps TP final rule) as equipment designed to move liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver, and controls. 81 FR 4086 (Jan. 25, 2016). Dedicated-purpose pool pumps, which are the subject of this notice of proposed rulemaking (NOPR), meet this definition of a pump and are covered under the pump equipment type. However, DOE has not yet established a test procedure or standards applicable to dedicated-purpose pool pumps (section I.B).

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[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s) and 6316(a)(1)), and (2) making representations about the energy consumption of that equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with any relevant standards promulgated under EPCA.

EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered equipment during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

In addition, before prescribing any final test procedures, DOE must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b)(1)–(2))

DOE is authorized to prescribe energy conservation standards and corresponding test procedures for covered equipment such as dedicated-purpose pool pumps. Although DOE is currently evaluating whether to establish energy conservation standards for dedicated-purpose pool pumps (Docket No. EERE–2015–BT–STD–0008), DOE must first establish a test procedure that measures the energy use, energy efficiency, or estimated operating costs of a given type of covered equipment before establishing any new energy conservation standards for that equipment. *See, generally,* 42 U.S.C. 6295(o) and 6316(a).

To fulfill these requirements, in this NOPR, DOE proposes to establish a test procedure for dedicated-purpose pool pumps in advance of the finalization of the ongoing ECS rulemaking for this equipment. (*See* Docket No. EERE–2015–BT–STD–0008.) The test procedure proposed in this NOPR includes the methods necessary to: (1) Measure the performance of the covered equipment, (2) use the measured results to calculate the weighted energy factor (WEF) to represent the energy consumption of the dedicated-purpose pool pump, inclusive of a motor and any controls, and (3) determine the minimum test sample (*i.e.,* number of units) and permitted range of represented values. In this NOPR, DOE also proposes to set the scope of those dedicated-purpose pool pumps to which the proposed test methods would apply.

If adopted, manufacturers would be required to use the DPPP test procedure and metric when making representations regarding the WEF (section III.B.2 for more information) of covered equipment beginning 180 days after the publication date of any DPPP TP final rule establishing such procedures. All representations of energy factor (EF),[3] overall (wire-to-water) efficiency, driver power input, nominal motor horsepower,[4] total horsepower, service factor, pump power output (hydraulic horsepower), and true power factor (PF) must be based on testing in accordance with the new DPPP test procedure beginning 180 days after the publication date of a final rule in the **Federal Register**. *See* 42 U.S.C. 6314(d). However, DOE notes that certification of compliance with any energy conservation standards for dedicated-purpose pool pumps would not be required until the compliance date of any final rule establishing energy conservation standards applicable to this equipment. (*See* Docket No. EERE–2015–BT–STD–0008.)

B. Background

Dedicated-purpose pool pumps are a style of pump for which DOE has not yet established a test procedure or energy conservation standards. Although DOE recently completed final rules establishing energy conservation standards (81 FR 4368 (Jan. 26, 2016); January 2016 general pumps ECS final rule) and a test procedure (81 FR 4086 ((Jan. 25, 2016); January 2016 general pumps TP final rule) for certain categories and configurations of pumps, DOE declined in those rules to establish any requirements applicable to dedicated-purpose pool pumps because of their different equipment characteristics and applications. 81 FR 4086, 4094 (Jan. 25, 2016). Specifically, in the January 2016 general pumps TP and ECS final rules, DOE established relevant definitions, test procedures, and energy conservation standards for end suction close-coupled (ESCC); end suction frame mounted/own bearings (ESFM); in-line (IL); radially split, multi-stage, vertical, in-line diffuser casing (RSV); and submersible turbine (ST) pumps with the following characteristics:

- 25 gallons per minute (gpm) and greater (at best efficiency point (BEP) at full impeller diameter);
- 459 feet of head maximum (at BEP at full impeller diameter and the number of stages specified for testing);
- design temperature range from 14 to 248 °F;
- designed to operate with either (1) a 2- or 4-pole induction motor, or (2) a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute (rpm) and/or 1,440 and 2,160 rpm, and in either case, the driver and impeller must rotate at the same speed;
- 6-inch or smaller bowl diameter for ST pumps (HI VS0);
- a clean water pump; [5] and

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[3] Energy Factor (EF) is a metric that is common in the DPPP industry and which describes the quantity of water provided by a dedicated-purpose pool pump over the input power required to pump that amount of water in units of gallons per watt-hour (gal/Wh). EF is described in more detail in section III.B and the relevant test methods for determining EF are described in section III.C and III.F.

[4] In this NOPR, DOE proposes specific test methods and metrics applicable to nominal motor horsepower, total horsepower, service factor, and hydraulic horsepower of dedicated-purpose pool pumps. See section III.E.1 for a discussion of the different horsepower metrics applicable to dedicated-purpose pool pumps and the proposed testing and labeling requirements applicable to these metrics.

[5] In the January 2016 general pumps TP final rule, DOE defined "clean water pump" as a pump that is designed for use in pumping water with a maximum non-absorbent free solid content of 0.016 pounds per cubic foot, and with a maximum dissolved solid content of 3.1 pounds per cubic foot, provided that the total gas content of the water does not exceed the saturation volume, and disregarding any additives necessary to prevent the water from freezing at a minimum of 14 °F. 80 FR 4086, 4100 (Jan. 25, 2016).

- not a fire pump,[6] a self-priming pump,[7] a prime-assist pump,[8] a magnet driven pump,[9] a pump designed to be used in a nuclear facility subject to 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities"; or a pump meeting the design and construction requirements set forth in any relevant Military Specifications.[10]

The pumps for which standards and a test procedure were established in the January 2016 general pumps TP and ECS final rules will be hereafter collectively referred to as "general pumps" in this DPPP TP NOPR.

The January 2016 general pumps TP and ECS final rules were based on the recommendations of the Commercial and Industrial Pump (CIP) Working Group established through the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC) to negotiate standards and a test procedure for general pumps. (Docket No. EERE–2013–BT–NOC–0039)[11] The CIP Working Group concluded its negotiations on June 19, 2014, with a consensus vote to approve a term sheet containing recommendations to DOE on appropriate standard levels for general pumps, as well as recommendations addressing issues related to the metric and test procedure for general pumps ("CIP Working Group recommendations").[12]

In the CIP Working Group recommendations, the Working Group formally recommended DOE initiate a separate rulemaking for dedicated-purpose pool pumps. (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #5A at p. 2) Therefore, in the January 2016 general pumps TP final rule, DOE explicitly excluded dedicated-purpose pool pumps from the categories of pumps to which the test procedure and standards applied. 81 FR 4086, 4098–99 (Jan. 25, 2016). DOE also refrained from adopting a definition for dedicated-purpose pool pump and stated that DOE would define the term in the separate rule specifically addressing such equipment. *Id.*

To begin the separate rulemaking for dedicated-purpose pool pumps referenced in the January 2016 general pumps TP final rule (81 FR 4086, 4098–99 (Jan. 25, 2016)) and recommended by the CIP Working Group (Docket No. EERE–2013–BT–NOC–0039, No. 92, Recommendation #5A at p. 2), on May 8, 2015, DOE issued a Request for Information (RFI), hereafter referred to as the "May 2015 DPPP RFI." The May 2015 DPPP RFI presented information and requested public comment about any definitions, metrics, test procedures, equipment characteristics, and typical applications relevant to DPPP equipment. 80 FR 26475. In response to the May 2015 DPPP RFI, DOE received six written comments. The commenters included the Association of Pool and Spa Professionals (APSP); Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCG), Southern California Edison (SCE), and San Diego Gas and Electric Company (SDG&E), collectively referred to herein as the California Investor-Owned Utilities (CA IOUs); the Hydraulic Institute (HI); Ms. Newman; the National Electrical Manufacturers Association (NEMA); and River City Pool and Spa (River City).

In response to the May 2015 DPPP RFI, APSP, HI, and CA IOUs all encouraged DOE to pursue a negotiated rulemaking for dedicated-purpose pool pumps. (Docket. No. EERE–2015–BT–STD–0008, APSP, No. 10 at p. 2; HI, No. 8 at p. 2; CA IOUs, No. 11 at p. 2) Consistent with feedback from these interested parties, DOE began a process through the ASRAC to discuss conducting a negotiated rulemaking to develop standards and a test procedure for dedicated-purpose pool pumps as an alternative to the traditional notice and comment route that DOE had already begun. (Docket No. EERE–2015–BT–STD–0008) On August 25, 2015, DOE published a notice of intent to establish a negotiated rulemaking working group for dedicated-purpose pool pumps (as previously defined, the "DPPP Working Group") to negotiate, if possible, Federal standards for the energy efficiency of dedicated-purpose pool pumps and to announce the first public meeting. 80 FR 51483. The initial ASRAC charter allowed for 3 months of working group meetings to establish the scope, metric, definitions, and test procedure for dedicated-purpose pool pumps and reserved any discussion of standards to a later set of meetings once analysis had been conducted based on the framework established under the original charter. (Docket No. EERE–2013–BT–NOC–0005, No. 56 at p. 27) On October 15, 2015, DOE published a notice of public open meetings of the DPPP Working Group. 80 FR 61996. The members of the Working Group were selected to ensure a broad and balanced array of interested parties and expertise, including representatives from efficiency advocacy organizations and manufacturers. Additionally, one member from ASRAC and one DOE representative were part of the Working Group. Table I.1 lists the 13 members of the DPPP Working Group and their affiliations.

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[6] In the January 2016 general pumps TP final rule, DOE defined "fire pump" as a pump that is compliant with NFPA 20–2016, "Standard for the Installation of Stationary Pumps for Fire Protection," and is either: (1) UL listed under ANSI/UL 448–2013, "Standard for Safety Centrifugal Stationary Pumps for Fire-Protection Service," or (2) FM Global (FM) approved under the January 2015 edition of FM Class Number 1319, "Approval Standard for Centrifugal Fire Pumps (Horizontal, End Suction Type)." 80 FR 4086, 4101 (Jan. 25, 2016).

[7] In the January 2016 general pumps TP final rule, DOE defined "self-priming pump" as a pump that is (1) is designed to lift liquid that originates below the centerline of the pump inlet; (2) contains at least one internal recirculation passage; and (3) requires a manual filling of the pump casing prior to initial start-up, but is able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve. 80 FR 4086, 4147 (Jan. 25, 2016). This NOPR proposes to modify that definition. (See section III.A.3.b.)

[8] In the January 2016 general pumps TP final rule, DOE defined "prime-assist pump" as a pump that (1) is designed to lift liquid that originates below the centerline of the pump inlet; (2) requires no manual intervention to prime or re-prime from a dry-start condition; and (3) includes a device, such as a vacuum pump or air compressor and venturi eductor, to remove air from the suction line in order to automatically perform the prime or re-prime function at any point during the pump's operating cycle. 80 FR 4086, 4147 (Jan. 25, 2016).

[9] In the January 2016 general pumps TP final rule, DOE defined "magnet driven pump" as a pump in which the bare pump is isolated from the motor via a containment shell and torque is transmitted from the motor to the bare pump via magnetic force. The motor shaft is not physically coupled to the impeller or impeller shaft. 80 FR 4086, 4147 (Jan. 25, 2016).

[10] MIL–P–17639F, "Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use" (as amended); MIL–P–17881D, "Pumps, Centrifugal, Boiler Feed, (Multi-Stage)" (as amended); MIL–P–17840C, "Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship Application)" (as amended); MIL–P–18682D, "Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard" (as amended); and MIL–P–18472G, "Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant" (as amended). Military specifications and standards are available for review at *http://everyspec.com/MIL-SPECS*.

[11] Information on the ASRAC, the CIP Working Group, and meeting dates is available at *http://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee*.

[12] The term sheet containing the Working Group recommendations is available in the CIP Working Group's docket. (Docket No. EERE–2013–BT–NOC–0039, No. 92)

TABLE I.1—ASRAC DPPP WORKING GROUP MEMBERS AND AFFILIATIONS

Member	Affiliation	Abbreviation
John Caskey	National Electrical Manufacturers Association (and ASRAC representative)	NEMA
John Cymbalsky	U.S. Department of Energy	DOE
Kristin Driskell	California Energy Commission	CEC
Scott Durfee	Nidec Motor Corporation	Nidec
Jeff Farlow	Pentair Aquatic Systems	Pentair
Gary Fernstrom	California Investor-Owned Utilities (PG&E, SDG&E, SCG, and SCE)	CA IOUs
Patrizio Fumagalli	Bestway USA, Inc	Bestway
Paul Lin	Regal Beloit Corporation	Regal
Joanna Mauer	Appliance Standards Awareness Project	ASAP
Ray Mirza	Waterway	Waterway
Doug Philhower	Hayward Industries, Inc	Hayward
Shajee Siddiqui	Zodiac Pool Systems, Inc	Zodiac
Meg Waltner	Natural Resources Defense Council	NRDC

The DPPP Working Group commenced negotiations at an open meeting on September 30 and October 1, 2015, and held three additional meetings to discuss scope, metrics, and the test procedure.[13] The DPPP Working Group concluded its negotiations on December 8, 2015, with a consensus vote to approve a term sheet containing recommendations to DOE on scope, metric, and the basis of the test procedure (“December 2015 DPPP Working Group recommendations”).[14] The term sheet containing these recommendations is available in the DPPP Working Group docket. (Docket No. EERE–2015–BT–STD–0008, No. 51) ASRAC subsequently voted unanimously to approve the December 2015 DPPP Working Group recommendations during a January 20, 2016, meeting. (Docket No. EERE–2015–BT–STD–0008, No. 0052)

The December 2015 DPPP Working Group recommendations pertinent to the test procedure and standard metric are reflected in this NOPR. In addition to referring to the December 2015 DPPP Working Group recommendations, DOE also refers to discussions from the DPPP Working Group meetings regarding potential actions that were not formally approved. All references herein to approved recommendations include a citation to the December 2015 DPPP Working Group recommendations and are noted with the recommendation number (*e.g.*, Docket No. EERE–2015–BT–STD–0008, No. #, Recommendation #X at p. Y). References herein to discussions or suggestions of the DPPP Working Group not found in the December 2015 DPPP Working Group recommendations include a citation to meeting transcripts and the commenter, if applicable (*e.g.*, Docket No. EERE–2015–BT–STD–0008, [Organization], No. X at p. Y).

The DPPP Working Group also requested more time to discuss potential energy conservation standards for this equipment. On January 20, 2016, ASRAC met and recommended that the DPPP Working Group continue its work to develop and recommend potential energy conservation standards for this equipment. (Docket No. EERE–2013–BT–NOC–0005, No. 71 at pp. 20–52) Those meetings commenced on March 21, 2016, (81 FR 10152, 10153) and concluded on June 23, 2016, with approval of a second term sheet (June 2016 DPPP Working Group recommendations) containing Working Group recommendations related to scope, definitions, energy conservation standards—performance standards or design requirements for various styles of pumps, applicable test procedure, and labeling for dedicated-purpose pool pumps. (Docket No. EERE–2015–BT–STD–0008, No. 82) The June 2016 DPPP Working Group recommendations also contained a non-binding recommendation regarding industry training for dedicated-purpose pool pump trades. (Docket No. EERE–2015–BT–STD–0008, No. 82, Non-Binding Recommendation #1 at p. 5) The proposed definitions, DPPP test procedure, sampling provisions, enforcement requirements, and labeling requirements contained in this NOPR reflect the suggestions of the DPPP Working Group made during these meetings, as well as the recommendations contained in the both the December 2015 and June 2016 DPPP Working Group recommendations.

DOE notes that many of those who submitted comments pertaining to the 2015 RFI later became members of the DPPP Working Group. As such, the concerns of these commenters were fully discussed as part of the meetings, and the positions of these commenters may have changed as a result of the compromises inherent in a negotiation. The proposals in this NOPR incorporate and respond to several issues and recommendations that were raised in response to the 2015 RFI. However, where an RFI commenter became a member of the DPPP Working Group, DOE does not separately address comments made by that interested party regarding issues that were later discussed or negotiated in the DPPP Working Group. As a result, no comments are addressed twice. Table I.2 lists the RFI commenters as well as whether they participated in the DPPP Working Group.

TABLE I.2—LIST OF RFI COMMENTERS

Commenter	DPPP working group member
Association of Pool and Spa Professionals.	No.
California Investor-Owned Utilities.	Yes.
Hydraulics Institute	No.
Ms. Newman	No.
National Electrical Manufacturers Association.	Yes.
River City Pool and Spa	No.

II. Synopsis of the Notice of Proposed Rulemaking

In this TP NOPR, DOE proposes to amend subpart Y to 10 CFR part 431 to include definitions and a test procedure applicable to dedicated-purpose pool pumps. However, DOE proposes to establish a test procedure for only a specific subset of dedicated-purpose pool pumps. Specifically, this proposed test procedure would apply only to self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps. The proposed test procedure would not apply to integral cartridge-filter pool pumps, integral sand-filter pool pumps, storable electric spa pumps, or rigid electric spa pumps. The proposed test procedure would be applicable to those varieties of pool pumps for which DOE is considering performance-based standards, as well as additional categories of dedicated-purpose pool pumps for which the DPPP Working Group did not propose standards (see section III.A.6 for more information on the applicability of the proposed test procedure to different DPPP varieties). However, DOE notes that the scope of any energy conservation standards would be established in a separate ECS rulemaking for dedicated-purpose pool pumps. (Docket No. EERE–2015–BT–STD–0008) Manufacturers of dedicated-purpose pool pumps subject to this TP and the related ECS rulemaking would be required to use this DPPP test procedure when certifying compliance with any applicable standard and when making representations about the efficiency or energy use of their equipment. (42 U.S.C. 6314(d))

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[13] Details of the negotiations sessions can be found in the public meeting transcripts that are posted to the docket for the Working Group (*www.regulations.gov/#!docketDetail;D=EERE-2015-BT-STD-0008*).

[14] The ground rules of the DPPP Working Group define consensus as no more than three negative votes. (Docket No. EERE–2015–BT–0008–0016 at p. 3) Concurrence was assumed absent overt dissent, evidenced by a negative vote. Abstention was not construed as a negative vote.

In this NOPR, DOE proposes a new metric, the weighted energy factor (WEF), to characterize the energy performance of dedicated-purpose pool pumps within the scope of this test procedure. WEF is determined as a weighted average of water flow rate over the input power to the dedicated-purpose pool pump at different load points, depending on the variety of dedicated-purpose pool pump and the number of operating speeds with which it is distributed in commerce. The proposed DPPP test procedure contains the methods for determining WEF for self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps. In addition, the proposed DPPP test procedure contains a test method to determine the self-priming capability of pool filter pumps to effectively differentiate self-priming and non-self-priming pool filter pumps. Finally, the proposed DPPP test procedure contains optional methods for determining the WEF for replacement DPPP motors.

DOE's proposed test method includes measurements of flow rate and input power, both of which are required to calculate WEF, as well as other quantities to effectively characterize the rated DPPP performance (*e.g.*, head, hydraulic output power, rotating speed). For consistent and uniform measurement of these values, DOE proposes to incorporate by reference the test methods established in HI 40.6–2014, "Methods for Rotodynamic Pump Efficiency Testing," with certain exceptions. DOE reviewed the relevant sections of HI 40.6–2014 and determined that HI 40.6–2014, in conjunction with the additional test methods and calculations proposed in this test procedure, would produce test results that reflect the energy efficiency, energy use, or estimated operating costs of a dedicated-purpose pool pump during a representative average use cycle. (42 U.S.C. 6314(a)(2)) DOE also reviewed the burdens associated with conducting the proposed test procedure, including HI 40.6–2014, and, based on the results of such analysis, found that the proposed test procedure would not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE's analysis of the burdens associated with the proposed test procedure is presented in section IV.B.

This NOPR also proposes requirements regarding the sampling plan, certification requirements, and representations for covered dedicated-purpose pool pumps at subpart B of part 429 of title 10 of the Code of Federal Regulations. The sampling plan requirements are similar to those for several other types of commercial equipment and are appropriate for dedicated-purpose pool pumps based on the expected range of measurement uncertainty and manufacturing tolerances for this equipment (see section III.I.1 for more detailed information). As DOE's proposed DPPP test procedure contains methods for calculating the EF, pump overall efficiency, PF, and other relevant quantities, DOE also proposes provisions regarding allowable representations of energy consumption, energy efficiency, and other relevant metrics manufacturers may make regarding DPPP performance (section III.E).

Starting on the compliance date for any energy conservation standards that DOE may set for dedicated-purpose pool pumps, all dedicated-purpose pool pumps within the scope of those standards would be required certified in accordance with the amended subpart Y of part 431 and the applicable sampling requirements. DOE is also proposing that, beginning on the compliance date of any energy conservation standards that DOE may set for dedicated-purposed pool pumps, certain information be reported to DOE on an annual basis as part of a certification of compliance with those standards (section III.I.2). Similarly, all representations regarding the energy efficiency or energy use of dedicated-purpose pool pumps for which this proposed DPPP test procedure should be made by testing in accordance with the adopted DPPP test procedure 180 days after the publication date of any TP final rule establishing such procedures. (42 U.S.C. 6314(d)(1)) DOE understands that manufacturers of dedicated-purpose pool pumps likely have historical test data (*e.g.*, existing pump curves) that were developed with methods consistent with the DOE test procedure being proposed. As DOE understands that the proposed DPPP test procedure is based on the same testing methodology used to generate most existing pump performance information, DOE notes that it does not expect that manufacturers would need to regenerate all of the historical test data as long as the tested units remain representative of the basic model's current design and the rating remains valid under the adopted method of test for dedicated-purpose pool pumps. If the testing methods used to generate historical ratings for DPPP basic models were substantially different from those proposed in this NOPR or the manufacturer has changed the design of the basic model, the representations resulting from the historical methods would no longer be valid.

III. Discussion

In this NOPR, DOE proposes to amend subpart Y of part 431 to add a new DPPP test procedure and related definitions, amend 10 CFR 429.60 to add a new sampling plan for this equipment, and add new enforcement provisions for dedicated-purpose pool pumps in 10 CFR 429.110 and 429.134. The proposed amendments are shown in Table III.1.

TABLE III.1—SUMMARY OF PROPOSALS IN THIS NOPR, THEIR LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION

Location	Proposal	Summary of additions	Applicable preamble discussion
10 CFR 429.60	Test Procedure Sampling Plan and Certification Requirements.	Minimum number of dedicated-purpose pool pumps to be tested to rate a DPPP basic model, determination of representative values, and certification reporting requirements.	Section III.I.
10 CFR 429.110 & 429.134	Enforcement Provisions	Method for DOE determination of compliance of DPPP basic models.	Section III.I.
10 CFR 431.462	Definitions	Definitions pertinent to categorizing and testing of dedicated-purpose pool pumps.	Section III.A.
10 CFR 431.464 & Appendix B.	Test Procedure	Instructions for determining the WEF (and other applicable performance characteristics) for applicable varieties of dedicated-purpose pool pumps and replacement DPPP motors.	Sections III.B, III.C, III.D, III.E, III.F, and III.G.
10 CFR 431.466	Labeling	Requirements for labeling dedicated-purpose pool pumps.	III.G.

The following sections discuss DOE's proposals regarding (A) definitions related to the categorizing and testing of dedicated-purpose pool pumps; (B) the metric to describe the energy performance of dedicated-purpose pool pumps; (C) the test procedure for different varieties of dedicated-purpose pool pumps; (D) the specific test methods for determining pump performance that form the basis for the DOE test procedure; (E) additional test methods necessary to determine rated hydraulic horsepower,[15] other DPPP horsepower metrics,[16] and the self-priming capability of dedicated-purpose pool pumps; (F) selecting test samples and representations of energy use and energy efficiency; (G) labeling requirements for dedicated-purpose pool pumps; (H) an optional test method for replacement DPPP motors; and (I) certification and enforcement provisions for tested DPPP models.

A. Definitions

As discussed in section I.B, in the January 2016 general pumps TP final rule, DOE adopted a definition at 10 CFR 431.462 for "pump" along with other pump component- and configuration-related definitions. These definitions were necessary to establish the scope of the general pump test procedure and standards and to appropriately apply the test procedure. 81 FR 4086, 4090–4104 (Jan. 25, 2016).

Although dedicated-purpose pool pumps are a style of pump, DOE declined to establish a test procedure or standards applicable to dedicated-purpose pool pumps in the January 2016 general pumps TP and ECS final rules because of their different equipment characteristics and applications. *Id.* at 4094 (Jan. 25, 2016) and 81 FR 4368 (Jan. 26, 2016), respectively. Therefore, in this NOPR, DOE proposes a definition for dedicated-purpose pool pump, as well as related definitions for different varieties and operating speed configurations of dedicated-purpose pool pumps. DOE also proposes definitions pertinent to categorizing and testing dedicated-purpose pool pumps in accordance with the DOE test procedure. DOE presents these definitions in the subsequent sections. In addition, DOE is proposing definitions and methods for determining for several terms related to describing "DPPP size," including "rated hydraulic horsepower," "dedicated-purpose pool pump nominal motor horsepower," "dedicated-purpose pool pump service factor," and "dedicated-purpose pool pump motor total horsepower." These terms are discussed in detail in section III.E.1.

1. Existing Pump Definitions

As dedicated-purpose pool pumps fall into the larger pump equipment category, prior to proposing any definitions applicable to dedicated-purpose pool pumps, it is necessary to review existing definitions related to pumps. In the January 2016 general pumps TP final rule, DOE defined a "pump" as equipment designed to move liquids which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver, and controls. 81 FR 4086, 4090 (Jan. 25, 2016). In order to fully define the term "pump," DOE also adopted the following definitions for the terms "bare pump," "mechanical equipment," "driver," and "controls:"

- *Bare pump* means a pump excluding mechanical equipment, driver, and controls.
- *Mechanical equipment* means any component of a pump that transfers energy from a driver to the bare pump.
- *Driver* means the machine providing mechanical input to drive a bare pump directly or through the use of mechanical equipment. Examples include, but are not limited to, an electric motor, internal combustion engine, or gas/steam turbine.
- *Control* means any device that can be used to operate the driver. Examples include, but are not limited to, continuous or non-continuous controls, schedule-based controls, on/off switches, and float switches.

Id. at 4090–91.

DOE notes that because dedicated-purpose pool pumps are a style of pump, these terms also apply to the definition of dedicated-purpose pool pumps and certain DPPP components.

In addition to defining the term "pump," in the January 2016 general pumps TP final rule, DOE also established and defined five varieties of pump to which the test procedure and standards established in the January 2016 general pumps TP and ECS final rules, respectively, apply. These pump varieties are (1) ESCC, (2) ESFM, (3) IL, (4) RSV, and (5) ST pumps.

In order to specifically exclude dedicated-purpose pool pumps from the scope of the general pumps test procedure and standards, DOE explicitly excluded dedicated-purpose pool pumps from the ESCC pump and ESFM pump definitions. 81 FR 4086, 4098–99 (Jan. 25, 2016). Specifically, DOE defined "end suction close-coupled (ESCC) pump" as a close-coupled, dry rotor, end suction pump that has a shaft input power greater than or equal to 1-hp and less than or equal to 200-hp at BEP and full impeller diameter and that is not a dedicated-purpose pool pump. Examples include, but are not limited to, pumps within the specified horsepower range that comply with ANSI/HI nomenclature OH7, as described in ANSI/HI 1.1–1.2–2014. *Id.* at 4146. DOE also defined "end suction frame mounted/own bearings (ESFM) pump" as a mechanically-coupled, dry rotor, end suction pump that has a shaft input power greater than or equal to 1-hp and less than or equal to 200-hp at BEP and full impeller diameter and that is not a dedicated-purpose pool pump. Examples include, but are not limited to, pumps within the specified horsepower range that comply with ANSI/HI nomenclature OH0 and OH1, as described in ANSI/HI 1.1–1.2–2014. *Id.* at 4146.

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[15] Rated hydraulic horsepower refers to the hydraulic horsepower at maximum speed and full impeller diameter on the reference curve for the rated pump and is the metric DOE proposes to use to describe the "size" of dedicated-purpose pool pumps. (See section III.E.1.)

[16] DOE proposes, based on the June 2016 DPPP Working Group recommendations, standardized methods for determining nominal motor horsepower, total horsepower, and service factor of a dedicated purpose pool pump to support labeling provisions. The proposed test methods are discussed in section III.E and the labeling requirements are discussed in section III.G.

The definitions presented in the previous paragraph ensure that dedicated-purpose pool pumps cannot be classified as ESCC or ESFM, and thus are excluded from the scope of applicability of the general pumps test procedure. DOE notes that dedicated-purpose pool pumps are only constructed as end suction pumps and, thus, exclusion from the IL, RSV, and ST equipment varieties is not necessary as they are not end suction pumps.

As dedicated-purpose pool pumps are end suction pumps, DOE believes the definition for end suction pump established in the January 2016 general pumps TP final rule also applies to dedicated-purpose pool pumps. In the January 2016 general pumps TP final rule, DOE defined "end suction pump" as a single-stage, rotodynamic pump in which the liquid enters the bare pump in a direction parallel to the impeller shaft and on the side opposite the bare pump's driver-end. The liquid is discharged through a volute in a plane perpendicular to the shaft. 81 FR 4086, 4146 (Jan. 25, 2016). DOE notes that, as it is referenced in the definition for end suction pump, the definition for rotodynamic pump[17] established at 10 CFR 431.462 in the January 2016 general pumps TP final rule also applies to dedicated-purpose pool pumps. *Id.* at 4147.

In DOE's view, the term "dry rotor pump" applies to dedicated-purpose pool pumps because, to DOE's knowledge, all dedicated-purpose pool pumps are dry rotor, as defined in the January 2016 general pumps final rule. DOE defines "dry rotor pump" as "a pump in which the motor rotor is not immersed in the pumped fluid." 10 CFR 431.462. (Dry rotor pump is used herein in the definition of pressure cleaner booster pump (see section III.A.4.b)).

DOE requests comment on whether all dedicated-purpose pool pumps are dry rotor.

Other definitions established or incorporated by reference in the January 2016 general pumps TP final rule that apply to dedicated-purpose pool pumps are the following: The definition of basic model (discussed further in section III.A.8), the definitions in HI 40.6–2014 relevant to testing pumps (discussed further in section III.D.1), and the definition of self-priming pump (discussed further in section III.A.3.b). While other terms may be applicable to the description of dedicated-purpose pool pumps, they are not, at this time, proposed to be referenced in any of the DPPP definitions or specifications of the DPPP test procedure.

2. Definition of Dedicated-Purpose Pool Pump

The DPPP Working Group recommended that "dedicated-purpose pool pumps" comprise the following pump varieties: Self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps, integral sand-filter pool pumps, integral cartridge-filter pool pumps, storable electric spa pumps, and rigid electric spa pumps. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendations #1 at p. 1) The DPPP Working Group defined the specific characteristics of each specific pump variety that it considers to be a dedicated-purpose pool pump. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendations #4 at pp. 2–4) These definitions are discussed in more detail in sections III.A.3, III.A.4, and III.A.5.

Consistent with the recommendations of the DPPP Working Group, DOE proposes the following definition for dedicated-purpose pool pump:

Dedicated-purpose pool pump comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps, integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps.

DOE believes that the proposed definition for dedicated-purpose pool pump captures all varieties of pump that are typically used in pools to circulate water or provide other auxiliary functions and clearly delineates that the term includes only the listed varieties. DOE notes that the proposed definition is also consistent with comments received in response to the May 2015 DPPP RFI.

DOE requests comment on the proposed definition for "dedicated-purpose pool pump."

3. Pool Filter Pumps

Pool filter pumps are the most common style of dedicated-purpose pool pump. A "pool filter pump" or "pool circulation pump" is typically used to refer to an end suction style pump (see section III.A.1) that circulates water through a pool and filtration system and removes large debris using a basket strainer or other device. The DPPP Working Group recommended to define pool filter pump as an end suction pump that (a) either:

(1) Includes an integrated basket strainer, or

(2) does not include an integrated basket strainer, but requires a basket strainer for operation, as stated in manufacturer literature provided with the pump; and

(b) may be distributed in commerce connected to, or packaged with, a sand filter, removable cartridge filter, or other filtration accessory, so long as the filtration accessory is connected with consumer-removable connections that allow the pump to be plumbed to bypass the filtration accessory. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3) In this NOPR, DOE proposes adopting the Working Group's recommended definition for pool filter pump.

DOE requests comment on the proposed definition of "pool filter pump."

a. Definition of a Basket Strainer and Filtration Accessories

The proposed definition of pool filter pump includes the use of a basket strainer to differentiate pool filter pumps from other varieties of end suction pumps. The DPPP Working Group discussed the basket strainer feature and determined that all pool filter pumps will either include an integrated basket strainer or require one to be obtained separately and installed in order for the pump function correctly. (Docket No. EERE–2015–BT–STD–0008, CA IOUs and Pentair, No. 58

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[17] In the January 2016 general pumps TP final rule, DOE defined rotodynamic pump as a pump in which energy is continuously imparted to the pumped fluid by means of a rotating impeller, propeller, or rotor. 81 FR 4086, 4147 (Jan. 25, 2016).

at pp. 50–53) To clearly and unambiguously establish what would be considered a basket strainer when applying the pool filter pump definition, the DPPP Working Group recommended to define "basket strainer" as "a perforated or otherwise porous receptacle that prevents solid debris from entering a pump, when mounted within a housing on the suction side of a pump. The basket strainer receptacle is capable of passing spherical solids of 1 mm in diameter, and can be removed by hand or using only simple tools. Simple tools include but are not limited to a screwdriver, pliers, and an open-ended wrench." (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3)

The DPPP Working Group also noted that some pool filter pumps may be distributed in commerce with additional pool filtration equipment, such as a sand filter or removable cartridge filter, but that are otherwise similar to pool filter pumps sold without such additional filtration accessories. The DPPP Working Group concluded that, if the additional pool filtration equipment is connected to the bare pump with consumer-removable connections that allow the pump to be plumbed to bypass the filtration accessory, then the package, as distributed in commerce, should be considered as a pool filter pump. (Docket No. EERE–2015–BT–STD–0008, No. 58 at pp. 127–132) The DPPP Working Group also recommended that, if the removable cartridge filter or sand filter could not be plumbed out for testing, such a pump would be considered an integral cartridge-filter pool pump or an integral sand-filter pool pump, respectively, as described in section III.A.3.c. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3)

Therefore, to clearly establish what would be considered a "removable cartridge filter" for the purposes of applying these regulations, and especially to differentiate removable cartridge filters from basket strainers, the DPPP Working Group recommended that the definitions of basket strainer and removable cartridge filter include a specification for the diameter of spherical solid that the basket strainer or filter component is capable of passing. The DPPP Working Group discussed this issue and determined that a diameter of 1 mm would effectively distinguish between removable cartridge filters and basket strainers. (Docket No. EERE–2015–BT–STD–0008, CA IOUs, DOE, Waterway, and Zodiac, No. 53 at pp. 13–19) Therefore, the DPPP Working Group recommended a definition for "removable cartridge filter" as "a filter component with fixed dimensions that captures and removes suspended particles from water flowing through the unit. The removable cartridge filter is not capable of passing spherical solids of 1 mm in diameter, can be removed from the filter housing by hand or using only simple tools, and is not a sand filter. Simple tools include but are not limited to a screwdriver, pliers, and an open-ended wrench." (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3)

Similarly, to clearly differentiate the sand filters from other filtration apparatuses, such as basket strainers and removable cartridge filters, the DPPP Working Group recommended defining "sand filter" as "a device designed to filter water through sand or an alternate sand-type media." The proposed definition for sand filter is intended to include all depth filters that allow fluid to pass through while retaining particulates and debris in a porous filtration medium. In the DPPP equipment industry, such a filter is most commonly made with sand, but could also be made with other media such as diatomaceous earth. (Docket No. EERE–2015–BT–STD–0008, No. 58 at pp. 91–96).

DOE notes that these definitions are useful in clearly differentiating different styles of pool filter pumps, including integral cartridge-filter and sand-filter pool pumps, from those that have non-integral filtration accessories. In this NOPR, DOE proposes to adopt definitions for basket strainer, removable cartridge filter, and sand filter, as recommended by the DPPP Working Group.

DOE requests comment on the proposed definitions of "basket strainer," "removable cartridge filter," and "sand filter."

In addition, DOE also proposes a definition for "integral," which is presented and discussed in more detail in section III.A.3.c.

b. Self-Priming and Non-Self-Priming Pool Filter Pumps

All pool filter pumps on the market are either self-priming or non-self-priming. Self-priming pumps are able to lift liquid that originates below the centerline of the pump inlet and, after initial manual priming, are able to subsequently re-prime without the use of external vacuum sources, manual filling, or a foot valve. In contrast, non-self-priming pumps must be manually primed prior to start up each time. Accordingly, self-priming pumps are constructed in a different manner than non-self-priming pumps and have different energy use characteristics. Specifically, self-priming pool filter pumps typically incorporate a diffuser that maintains the prime on the pump between periods of operation. The diffuser affects the energy performance of the pump because it can decrease the maximum achievable energy efficiency.

In addition, whether a pool filter pump is self-priming or not also impacts the typical applications for pool filter pumps. Specifically, in the DPPP equipment industry, self-priming pool filter pumps are often referred to as "inground pool pumps" and non-self-priming pool filter pumps are often referred to as "aboveground pool pumps." [18] This is because in aboveground pools, the pump is typically installed on the ground and below the water level in the pool, so the water will naturally flood the pump and self-priming capability is not necessary. Conversely, in inground pools, the pump is also located on the ground next to the pool, but the pump is above the water line and the pump must be self-priming for convenient and continuous operation of the pump.

Accordingly, the DPPP Working Group proposed to analyze self-priming and non-self-priming pool filter pumps separately. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #2A at p. 2) The DPPP Working Group also recommended definitions for "self-priming pool filter pump" and "non-self-priming pool filter pump" as follows:

- *Self-priming pool filter pump* means a pool filter pump that is a self-priming pump.
- *Non-self-priming pool filter pump* means a pool filter pump that is not a self-priming pump.

(Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3)

DOE notes that, in the January 2016 general pumps TP final rule, DOE already defined the term "self-priming pump" as a pump that (1) is designed to lift liquid that originates below the centerline of the pump inlet; (2) contains at least one internal recirculation passage; and (3) requires a manual filling of the pump casing prior to initial start-up, but is able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve. 81 FR 4086, 4147 (Jan. 25, 2016). However, this definition is not applicable to dedicated-purpose pool pumps because pool filter pumps typically do not contain a recirculation passage to accomplish the self-priming function. Instead, self-priming dedicated-purpose pool pumps typically use a diffuser to maintain prime. Therefore, DOE must develop a new definition that differentiates self-priming versus non-self-priming pool filter pumps.

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[18] DOE notes that in the May 2015 DPPP RFI, DOE referred to self-priming and non-self-priming pool filter pumps as inground and aboveground pool pumps, respectively. 80 FR 26475, 26481 (May 8, 2015)

In considering a definition for self-priming pool filter pump, the DPPP Working Group subsequently discussed any unique characteristics that would effectively differentiate self-priming pool filter pumps from those that were not. Specifically, the DPPP Working Group members noted that NSF International[19]/ANSI 50–2015 (NSF/ANSI 50–2015), "Equipment for Swimming Pools, Spas, Hot Tubs, and Other Recreational Water Facilities," which contains testing methods and criteria for determining whether a dedicated-purpose pool pump is capable of self-priming. (Docket No. EERE–2015–BT–STD–0008, No. XX at pp. 16–40; 109–114; 122–129) Specifically, section 6.8 of NSF/ANSI 50–2015 states that "a pump designated as self-priming shall be capable of repriming itself when operated under a suction lift without the addition of more liquid. Self-priming capability shall be verified in accordance with Annex C, section C.3." Further, section C.3 of Annex C of NSF/ANSI 50–2015 describes the self-priming capability test method. The criteria a pump must meet to satisfy the self-priming capability test are being able to prime under a vertical lift of 5 feet or the manufacturer's specified lift, whichever is greater, within 6 minutes or the manufacturer's recommended time, whichever is greater.

The NSF/ANSI 50–2015 method provides manufacturers with a considerable amount of discretion regarding the categorization of self-priming pumps. However, DOE intends to establish clear and unambiguous criteria to determine self-priming capability to ensure consistent and equitable product ratings across pump models. The DPPP Working Group discussed the importance of aligning the proposed definition of self-priming pool filter pump with that used in NSF/ANSI 50–2015. Specifically, Hayward and Zodiac noted that the vertical lift and true priming time referenced in any potential DOE definition should be equivalent to that specified in NSF/ANSI 50–2015. (Docket No. EERE–2015–BT–STD–0008, Hayward, No. 79 at pp. 160; Zodiac, No. 79 at pp. 161–162,)

In order for DOE's definitions to be clear, consistent, and unambiguous, DOE must specify clear and unambiguous criteria that would be used to determine whether a pool filter pump is self-priming. To that end, the DPPP Working Group proposed definitions for self-priming and non-self-priming pool filter pumps that were consistent with the NSF/ANSI 50–2015 criteria, but also provided clear and unambiguous criteria to allow for consistent categorization of such pumps. Specifically, in the April 2016 meeting, the DPPP Working Group voted to approve the following definitions for self-priming and non-self-priming pool filter pumps:[20]

Self-priming pool filter pump means a pool filter pump that is certified under NSF/ANSI 50–2015 to be self-priming or is capable of re-priming to a vertical lift of at least 5 feet with a true priming time less than or equal to 10 minutes, when tested in accordance with NSF/ANSI 50–2015.

Non-self-priming pool filter pump means a pool filter pump that is not certified under NSF/ANSI 50–2015 to be self-priming and is not capable of re-priming to a vertical lift of at least 5 feet with a true priming time less than or equal to 10 minutes, when tested in accordance with NSF/ANSI 50–2015.

The definitions are consistent with the NSF/ANSI 50–2015 self-priming designation such that any pumps certified as self-priming under NSF/ANSI 50–2015 would be treated as self-priming pool filter pumps under the DOE regulations, even if such a pump was certified based on manufacturer's specified or recommended vertical lift and/or true priming time. However, as certification with NSF/ANSI 50–2015 is voluntary, the definitions also adopt specific criteria in terms of vertical lift and true priming time that are applicable to any pool filter pumps not certified as self-priming under NSF/ANSI 50–2015. The criterion for vertical lift is specified as 5 feet, consistent with the NSF/ANSI 50–2015 requirement. This ensures that all pool filter pumps that can achieve a vertical lift of 5 feet (within the required true priming time), whether they are certified with NSF/ANSI or not, would be considered a self-priming pool filter pump under DOE's regulations. However, DOE notes that, in order to specify the appropriate level of precision in the definitions, DOE proposes to specify the vertical lift value as 5.0 feet. DOE believes this level of precision is reasonable and achievable given the repeatability of the test and the level of accuracy required by the equipment for measuring distance specified in section III.D.2.f.

The criterion for true priming time recommended by the DPPP Working Group is 10 minutes, as opposed to the 6 minutes specified in NSF/ANSI 50–2015. This is because the 6 minute threshold is a minimum, and manufacturers believed that some pool filter pumps that are currently considered self-priming pool filter pumps in the industry have true priming times greater than 6 minutes. Thus, the DPPP Working Group believed that 10 minutes was more appropriate and comprehensive. Similar to the specification on vertical lift, DOE proposes to more precisely specify the true priming time as 10.0 minutes, which DOE also believes is reasonable and consistent with the level of accuracy required by the time measurement equipment specified in section III.D.2.f.

Therefore, DOE proposes to adopt new definitions for self-priming and non-self-priming pool filter pumps based on the NSF/ANSI 50–2015 test and the criteria recommended by the DPPP Working Group, with minor modifications regarding the level of precision required by the criteria. DOE notes that these definitions rely on the NSF/ANSI 50–2015 test method to determine self-priming capability. Accordingly, DOE proposes to incorporate by reference relevant sections of the NSF/ANSI 50–2015 standard and also proposes several modifications and additions to improve repeatability and consistency of the test results. DOE's proposed test procedure for determining self-priming capability, including the incorporation by reference of the NSF/ANSI 50–2015 test method, is discussed further in section III.E.2.

As noted previously, DOE established a definition for self-priming pump in the January 2016 general pumps TP final rule that is not applicable to dedicated-purpose pool pumps. 81 FR 4086, 4147 (Jan. 25, 2016). However, self-priming pool filter pumps are a style of pump and are self-priming. Therefore, to ensure the definition of self-priming pump is comprehensive and consistent with the proposed new definitions for self-priming and non-self-priming pool filter pump, DOE proposes to modify the definition of self-priming pump to also include self-priming pool filter pumps, in addition to the other referenced criteria. The proposed amended definition for self-priming pump would read as set out in the regulatory text at the end of this document.

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[19] NSF International was previously called the National Sanitation Foundation, but changed their name to NSF International in 1990.

[20] There was one vote against the approved definitions of self-priming and non-self-priming pool filter pump. Pentair disagreed with the proposed definitions because Pentair manufactures aboveground pool pumps that can prime themselves to some extent. Although Pentair does not claim these pumps as self-priming, they would meet the definition of self-priming proposed by the Working Group. As such, Pentair was concerned that a sizeable portion of their aboveground pumps would be classified as the self-priming variety. (Docket No. EERE–2015–BT–STD–0008, Pentair, No. 79 at p. 191)

DOE requests comment on the proposed amendments to the definition of self-priming pump.

Finally, as discussed further in section III.A.4.a, a waterfall pump is a specific style of pool filter pump that has flow and head characteristics designed specifically for waterfall and water feature applications. Section III.A.4.a also presents the specific definition for waterfall pump. As waterfall pumps are pool filter pumps and could be either self-priming or non-self-priming, unless explicitly excluded, they would meet the definitions of self-priming or non-self-priming pool filter pump proposed by the Working Group. However, DOE intends for such pumps to be treated specifically as waterfall pumps. Therefore, in order to exclude waterfall pumps from the self-priming and non-self-priming pool filter pump varieties, DOE proposes to clarify such in the definition of self-priming and non-self-priming pool filter pump. The proposed definitions for self-priming and non-self-priming pool filter pump read as set out in the regulatory text at the end of this document.

DOE requests comment on the proposed definitions for "self-priming pool filter pump" and "non-self-priming pool filter pump."

c. Integral Cartridge-Filter and Integral Sand-Filter Pool Pumps

Most self-priming and non-self-priming filter pumps are installed in permanent inground or aboveground pools. However, a significant market also exists for temporary pools; *e.g.*, inflatable or collapsible pools that can be deflated or collapsed when not in use. Although temporary pools also require dedicated-purpose pool pumps to circulate and filter the water, these pools are typically served by a unique style of dedicated-purpose pool pump that is exclusively distributed in commerce with a temporary pool or as a replacement pump for such a pool. These pumps are integrally and permanently mounted to a filtration accessory such as an integral cartridge-filter or sand-filter. These pumps can only be operated with the integral filtration accessory inline—the filtration accessory cannot be plumbed out for the purposes of testing. As a result, these pumps may require separate testing considerations than dedicated-purpose pool pumps for non-temporary pools. However, as discussed further in section III.A.6, the DPPP Working Group recommended only prescriptive energy conservation standards for such equipment, not performance-based standards. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #2B at p. 2) The recommended prescriptive standard requires that timers be distributed in commerce with the pumps. (Docket No. EERE–2015–BT–STD–0008, No. 82 Recommendation #2 at p. 2) Therefore, the test procedure proposed in this document is not applicable to integral cartridge-filter and sand-filter pool pumps.

DOE needs to define integral cartridge-filter and integral sand-filter pool pumps clearly to differentiate them from other DPPP varieties. The DPPP Working Group recommended the following definitions for integral cartridge-filter pool pump and integral sand-filter pool pump:

- *Integral cartridge-filter pool pump* means a pump that requires a removable cartridge filter, installed [in a housing] on the suction side of the pump, for operation; and the pump cannot be plumbed to bypass the cartridge filter for testing.
- *integral sand-filter pool pump* means a pump distributed in commerce with a sand filter that cannot be bypassed for testing.

(Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3)

DOE believes that the proposed definitions differentiate integral cartridge-filter and integral sand-filter pool pumps from other varieties of pool filter pumps based on their physical construction. DOE proposes to adopt the definitions for integral cartridge-filter pool pump and integral sand-filter pool pump recommended by the DPPP Working Group with a minor change to use consistent terminology in both definitions.

DOE requests comment on the proposed definition of "integral cartridge-filter pool pump" and "integral sand-filter pool pump."

4. Other Varieties of Dedicated-Purpose Pool Pumps

In addition to pool filter pumps, in the May 2015 DPPP RFI, DOE identified varieties of dedicated-purpose pool pumps that are used to drive auxiliary pool equipment such as pool cleaners and water features. 80 FR 26475, 26481 (May 8, 2015). These pumps, which include waterfall pumps and pressure cleaner booster pumps, are discussed in greater detail in the following sections.

a. Waterfall Pumps

Certain styles of pumps are similar in design and construction to pool filter pumps but specifically intended to pump water for water features, such as waterfalls, and, therefore, have limited head and speed operating ranges. DOE refers to these pumps as waterfall pumps. Waterfall pumps meet the definition of pool filter pump discussed in section III.A.3.b, but are always equipped with a lower speed motor (approximately 1,800 rpm) in order to serve the specific high flow, low head applications of typical water features. Based on this unique construction and end user utility, the DPPP Working Group found it appropriate to differentiate waterfall pumps from self-priming and non-self-priming pool filter pumps. In accordance with the intent[21] of the December 2015 DPPP Working Group's recommendation (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–4), DOE proposes to define waterfall pump as "a pool filter pump with maximum head less than or equal to 30 feet, and a maximum speed less than or equal to 1,800 rpm."

The proposed definition uses maximum head and a specific maximum speed to distinguish waterfall pumps from other varieties of pool filter pumps. During negotiations, Hayward noted that waterfall pumps typically operate at half speed [of a typical dedicated-purpose pool pump], because the application of a waterfall feature does not require a significant amount of head. (Docket No. EERE–2015–BT–STD–0008, Hayward, No. 39 at pp. 62–63) In this context, half speed refers to 1,800 rpm nominal speed or a 4-pole motor. (Docket No. EERE–2015–BT–STD–0008, Hayward, No. 39 at p. 74) The DPPP Working Group agreed that all currently available waterfall pumps utilize 4-pole motors, as their low flow requirements do not necessitate the use of a higher speed 2-pole motor. Furthermore, the DPPP Working Group reviewed publically available specification and performance literature for waterfall pumps offered by three major manufacturers. The DPPP Working Group found that these waterfall pumps are single speed and use 4-pole motors and, as shown in Figure III.1, have a maximum head less than or equal to 30 feet.

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[21] DOE notes that the verbatim text of the waterfall pump definition proposed by the DPPP Working Group in the December 2015 DPPP Working Group recommendations is "a maximum 1,800 rpm nominal speed, motor-driven pool filter pump with maximum head less than or equal to 30 feet." (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #4 at pp. 2–4) However, in this NOPR, DOE proposes to make a few modifications to the definition recommended by the Working Group to improve the clarity of the definition. Specifically, DOE proposes to rearrange the terms in the definition, and remove the reference to a waterfall pump as referencing a specific driver. DOE believes these changes are consistent with the intent of the DPPP Working Group and do not substantially change the meaning of the definition.

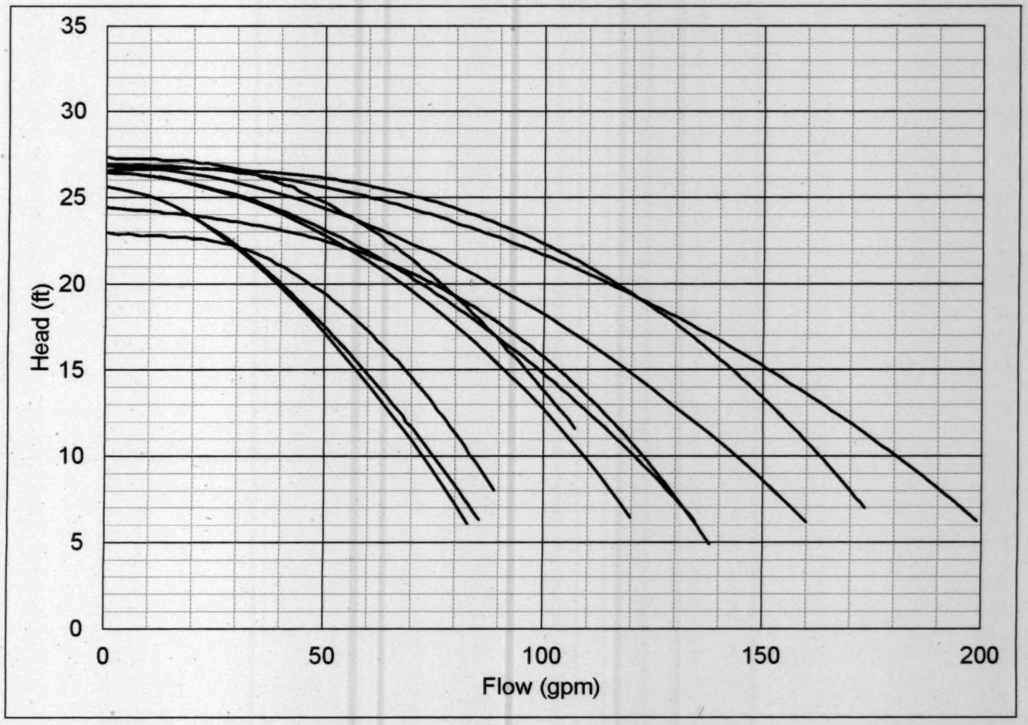

Figure III.1 Performance Curves for Waterfall Pumps Marketed by Different Manufacturers

The DPPP Working Group compared the waterfall pump performance data with the performance data of those defined as self-priming and non-self-priming pool filter pumps, and determined that those filter pumps all produce more than 30 feet of head. Therefore, the DPPP Working Group concluded that a maximum head of 30 feet, combined with a motor with a maximum rotating speed of 1,800, would clearly distinguish waterfall pumps from other varieties of pool filter pumps.

DOE requests comment on the proposed definition of "waterfall pump."

b. Pressure Cleaner Booster Pumps

Pressure cleaner booster pumps provide the water pressure that is used to both propel pressure-side pool cleaners along the bottom of the pool and to remove debris as the cleaner moves. To perform this task, a pressure cleaner booster pump must provide a high amount of head and a low flow.

The DPPP Working Group recommended that pressure cleaner booster pumps be included as a variety of dedicated-purpose pool pump, subject to the test procedure, and specifically considered in the analysis to support potential energy conservation standards. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #1 at p. 1, #2A at p. 2, and #6 at p. 5) However, the DPPP Working Group did not recommend a definition of pressure cleaner booster pump due to the difficulty of effectively differentiating pressure cleaner booster pumps from other DPPP varieties. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at p. 3) Instead, the DPPP Working Group recommended that DOE develop an appropriate definition.

The DPPP Working Group discussed different design and performance aspects of pressure cleaner booster pumps, though none were determined to be sufficiently unique to pressure cleaner booster pumps to effectively differentiate them from other pump varieties. Specifically, the DPPP Working Group acknowledged that pressure cleaner booster pumps have essentially the same construction and similar performance characteristics (*e.g.*, high head and low flow) as other general purpose end suction pumps. (Docket No. EERE–2015–BT–STD–0008, No. 53 at pp. 84–85)

After considering the design, construction, and performance information for pressure cleaner booster pumps and the discussions of the DPPP Working Group, DOE determined that the most effective differentiator for pressure cleaner booster pumps is the fact that they are designed and marketed for a specific pressure-side cleaning application. Therefore, to effectively differentiate pressure cleaner booster pumps from other pump varieties, DOE proposes to define "pressure cleaner booster pump" as an end suction, dry rotor pump designed and marketed for pressure-side pool cleaner applications, and which may be UL listed under

ANSI/UL 1081–2014, "Standard for Swimming Pool Pumps, Filters, and Chlorinators."

The proposed definition for pressure cleaner booster pump does not contain any unique construction or operational features and instead utilizes intended application. To provide clarity and remove ambiguity when applying the proposed definition for pressure cleaner booster pump, DOE also proposes to adopt a definition for "designed and marketed" that DOE will use when determining the applicability of any DPPP test procedure or energy conservation standards to such pumps. Specifically, DOE proposes to define "designed and marketed" as meaning that the equipment is exclusively designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed solely for that application, with the designation on the packaging and all publicly available documents (*e.g.*, product literature, catalogs, and packaging labels).

In the proposed pressure cleaner booster pump definition, DOE also references ANSI/UL 1081–2014, "Standard for Swimming Pool Pumps, Filters, and Chlorinators," as an illustrative aide in identifying pressure cleaner booster pumps, as such pumps would be certified under the ANSI/UL 1081–2014 standard. However, DOE recognizes that other varieties of dedicated-purpose pool pumps may also be certified under ANSI/UL 1081–2014 and thus, the reference is not mandatory in determining whether a given pump would meet the definition of pressure cleaner booster pump.

DOE requests comment on the proposed definition of "pressure cleaner booster pump" and whether DOE should consider making ANSI/UL 1081–2014 a required label instead of illustrative in order to distinguish pressure cleaner booster pumps.

5. Storable and Rigid Electric Spa Pumps

In addition to swimming pools, dedicated-purpose pool pumps are also used in spas to circulate and filter the water and operate water jets. Similar to swimming pools, spas can range in size and construction style. Specifically, spas can be portable or permanent installations and can be constructed out of a variety of materials depending on the installation.

Permanent, inground spas are typically constructed similar to small inground pools and use the same pumps (*i.e.*, self-priming pool filter pumps described in section III.A.3.b) to operate the spa. In some applications, the same self-priming pool filter pump may serve both the pool and the spa. In other applications, the permanent, inground spa may have a dedicated self-priming pool filter pump that is identical in design and construction to the self-priming pool filter pump installed in permanent, inground pools.

Conversely, for portable spas, a specific-purpose pump is typically distributed in commerce with the portable spa. Typically, the pumps used in portable electric spas are specifically designed and marketed for storable electric spa applications only. Such portable electric spa applications are aboveground and can be further differentiated into two general categories: Storable (or temporary) electric spas and rigid (or permanent) electric spas. A storable electric spa refers to an inflatable or otherwise temporary spa that can be collapsed or compacted into a storable unit. In contrast, a rigid electric spa is constructed with rigid, typically more durable materials and cannot be collapsed or compacted for storage. Both of these spa varieties use a pump to circulate water and power the water features of the electric spa. However, the pumps that are typically installed in storable or rigid electric spas have different performance and design characteristics than other varieties of dedicated-purpose pool pumps installed in permanent pools and spas due to their different usage profiles.

In the May 2015 DPPP RFI, DOE identified spa pumps as small ESCC pumps that do not have an integrated basket strainer. 80 FR 26475, 26481 (May 8, 2015). In response to the May 2015 DPPP RFI, APSP commented that there is a difference between spa pumps and portable spa pumps. APSP commented that some spa pumps are similar to other pool pumps that are self-priming and have a strainer basket, while portable spas are not self-priming and do not have strainer baskets. (Docket No. EERE–2015–BT–STD–0008, APSP, No. 10 at pp. 8–9)

In response, DOE notes that ENERGY STAR also specifically defines and differentiates "residential portable spa pump" as a pump intended for installation in a non-permanently installed residential spa as defined in ANSI/NSPI–6 (ANSI/NSPI–6–1999), "Standard for Portable Spas." According to ENERGY STAR, such pumps are sometimes referred to as hot tub pumps, but do not include jetted bathtub pumps.[22]

The DPPP Working Group discussed potential spa pump definitions, necessary key characteristics that could differentiate the various styles of spa pumps, and the appropriateness of the proposed test procedure or any potential standards for these varieties of pumps. Ultimately, the DPPP Working Group recommended to define "storable electric spa pump" as "a pump that is distributed in commerce with one or more of the following: (1) An integral heater and (2) an integral air pump." The DPPP Working Group also recommended to define "rigid electric spa pumps" as "an end suction pump that does not contain an integrated basket strainer or require a basket strainer for operation as stated in the manufacturer literature provided with the pump," and meets the following three criteria: (1) Is assembled with four through bolts that hold the motor rear endplate, rear bearing, rotor, front bearing, front endplate, and the bare pump together as an integral unit; (2) is constructed with buttress threads at the inlet and discharge of the bare pump; and (3) uses a casing or volute and connections constructed of a non-metallic material. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #4 at p. 3) Research conducted for the DPPP Working Group indicates that all pumps currently marketed as rigid electric spa pumps exhibit all three of these features. (Docket No. EERE–2015–BT–STD–0008, No. 53 at pp. 23–24) Additionally, DOE's research did not identify any pumps with all three of these features that are not marketed for use with rigid spas.

Based on the December 2015 DPPP Working Group recommendations, DOE proposes to adopt the definitions recommended by the DPPP Working Group.

In addition, DOE notes that the proposed definition for storable electric spa pump differentiates the storable electric spa pump based on the unique characteristic that the pump is an integral part of an assembly that also contains an integral heater and/or an integral air pump. In support of the proposed definition for storable electric spa pump, the DPPP Working Group also recommended defining the term "integral" as "a part of the device that cannot be removed without compromising the device's function or destroying the physical integrity of the unit." (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #4 at p. 3) The DPPP Working Group determined that the proposed approach effectively differentiated rigid electric spa pumps from other varieties of dedicated-purpose pool pumps. (Docket No. EERE–2015–BT–STD–0008, No. 53 at pp. 20–21) DOE believes that the definition of integral reflects the fact that a storable electric spa pump or rigid electric spa pumps is part of a single, inseparable unit that also contains a heater and/or an air pump, and which cannot be separated without compromising the physical integrity of the equipment. Therefore, DOE proposes to adopt the definition for integral as proposed by the Working Group. DOE notes that the term integral is also applicable to the definitions for integral cartridge-filter and integral sand-filter pool pumps (see section III.A.3.c).

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[22] ENERGY STAR Pool Pumps—Program Requirements Version 1.1. Available at *https://www.energystar.gov/products/spec/pool_pumps_specification_version_1_0_pd*.

DOE requests comment on the proposed definitions for "storable electric spa pump," "rigid electric spa pump," and "integral."

6. Applicability of Test Procedure Based on Pump Configuration

In addition to specific definitions, the DPPP Working Group also discussed and provided recommendations pertinent to the scope of applicability of the DPPP test procedure. Ultimately, the DPPP Working Group recommended that the scope of the ECS analysis and applicable test procedure be limited to specific varieties of dedicated-purpose pool pumps. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendations #1, #2A, and #2B at pp. 1–2; Recommendation #6 at p. 5) Specifically, the DPPP Working Group recommended that the scope of analysis for standards consider only the following DPPP varieties and only recommended test methods for these varieties:

- self-priming pool filter pumps,
- non-self-priming pool filter pumps,
- waterfall pumps, and
- pressure cleaner booster pumps.

(Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #2 at p. 2 and 6 at p. 5)

Although the DPPP Working Group recommended defining integral cartridge-filter pool pumps, integral sand-filter pool pumps, storable electric spa pumps, and rigid electric spa pumps as dedicated-purpose pool pumps, it did not recommend that these DPPP varieties be considered in the ongoing ECS analysis or have test methods established in the DPPP test procedure. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendations #1, #2A, and #2B at pp. 1–2; Recommendation #6 at p. 5) For integral cartridge-filter and sand-filter pumps, as discussed previously, the DPPP Working Group recommended to consider only a prescriptive standard, which requires that timers be distributed in commerce with the pumps. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #2B at pp. 1–2) With a prescriptive standard, the performance-related metric (*i.e.,* WEF) and test procedure are not applicable.

Regarding storable electric spa pumps and rigid electric spa pumps, the DPPP Working Group did not recommend including these varieties of dedicated-purpose pool pumps in the scope of analysis for potential standards and did not recommend establishing a test procedure for them. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendations #2A at pp. 1–2 and #6 at p. 5) The DPPP Working Group excluded storable and rigid electric spa pumps from the recommended DPPP test procedure and standards analysis because the DPPP Working Group believed that it would be more appropriate to test and apply standards to storable and rigid electric spas (*i.e.,* portable electric spas) as an entire appliance, as is currently done under California Title 20 (Cal. Code Regs., tit. 20 section 1604, subd. (g)(2) and section 1605.3, subd. (g)(6)) and the ANSI/APSP Standard 14–2014 (ANSI/APSP 14–2014), "Portable Electric Spa Energy Efficiency." Similarly, in response to the May 2015 DPPP RFI, APSP commented that portable spa pumps do not use a significant amount of energy in a portable electric spa and should not be separately regulated as they are components used in a regulated appliance. (Docket No. EERE–2015–BT–STD–0008, APSP, No. 10 at pp. 8–10)

Although not included in the December 2015 DPPP Working Group recommendations, the DPPP Working Group discussed how the load points specified for self-priming and non-self-priming pool filter pumps were only applicable for pumps with a rated hydraulic horsepower less than 2.5 hp, where rated hydraulic horsepower refers to the hydraulic horsepower measured at the maximum operating speed and full impeller diameter of the rated pump, as discussed in section III.E.1. (Docket No. EERE–2015–BT–STD–0008, No. 57 at pp. 280–291 and No. 50 at p. 56–62) In a meeting following the December 2015 DPPP Working Group recommendations, on April 19, 2016, the DPPP Working Group discussed and ultimately recommended that DOE not develop a test procedure or standards for self-priming and non-self-priming pool filter pumps with a rated hydraulic horsepower greater than or equal to 2.5 hp. (Docket No. EERE–2015–BT–STD–0008, No. 79 at pp. 33–54) The DPPP Working Group discussed how the typical applications and field use of very large pool filter pumps differed significantly from pool filter pumps with hydraulic horsepower less than 2.5 hp. (Docket No. EERE–2015–BT–STD–0008, CA IOUs, No. 53 at pp. 169–171; CA IOUs, No. 54 at pp. 18–19; Waterway, No. 54 at pp. 21–22; Zodiac, No. 54 at p. 23) Specifically, unlike pool filter pumps with hydraulic horsepower less than 2.5 hp, which are typically installed in residential applications (section III.C.1), very large pool filter pumps are more commonly installed in commercial applications. In commercial pools, the head and flow characteristics of pool systems are significantly different from residential applications. (Docket No. EERE–2015–BT–STD–0008, CA IOUs No. 53 at pp. 197–198) Therefore, the DPPP Working Group determined that any test procedure for very large pool filter pumps would require unique load points.

In addition, the DPPP Working Group noted the lack of performance data for self-priming and non-self-priming pool filter pumps with a rated hydraulic horsepower greater than or equal to 2.5 hp, which precluded the DPPP Working Group from establishing baseline and maximum technologically feasible ("max-tech") efficiency levels. Without baseline and max-tech, the DPPP Working Group was unable to establish intermediary levels, and ultimately, was not able to effectively characterize the cost-versus-efficiency relationship for very large pool filter pumps. As a result, the DPPP Working Group recommended that DOE not develop standards for very large pool filter pumps as part of the current negotiated rulemaking and did not to recommend a test procedure for these pumps. (Docket No. EERE–2015–BT–STD–0008, No. 79 at pp. 33–54;) Therefore, consistent with the December 2015 DPPP Working Group recommendations, DOE proposes to not specify a test procedure for very large pool filter pumps with a rated hydraulic horsepower greater than or equal to 2.5 hp as part of this rulemaking. If DOE decides to pursue a test procedure and standards for very large pool filter pumps, DOE could do so as part of a future rulemaking. Accordingly, all future references to pool filter pumps, self-priming pool filter pumps, and non-self-priming pool filter pumps refer to pumps with a rated hydraulic horsepower less than 2.5 hp.

In accordance with the December 2015 DPPP Working Group recommendations, DOE proposes that the test procedure would only be applicable to those DPPP varieties for which DOE is considering establishing performance-based energy conservation standards: Self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps. However, DOE notes that applicability of the DPPP test procedure and standards may differ slightly with respect to dedicated-purpose pool pumps that are supplied by single-phase versus three-phase power. Specifically, the Working Group recommended that the scope of standards for self-priming pool filter pumps only apply to self-priming pool filter pumps served by single-phase power, while the recommended test procedure and reporting requirements would still be applicable to all self-priming pool filter pumps—both those served by single-phase power and those served by three-phase power. The DPPP Working Group also clarified that, regardless of whether the pump is supplied by single- or three-phase power, the recommended rated hydraulic horsepower limitation of 2.5 hp would still apply to both single- and three-phase self-priming pool filter pumps. (Docket No. EERE–2015–BT–STD–0008, No. 82 Recommendations #3 at p. 2) Therefore, consistent with the June 2016 DPPP Working Group recommendations, DOE proposes that the proposals contained in this NOPR regarding the test procedure, sampling requirements, labeling, and related provisions for dedicated-purpose pool pumps apply to all self-priming pool filter pumps and non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower, as well as waterfall pumps and pressure cleaner booster pumps, regardless of the phase of the supplied power with which they are intended to be used. DOE accordingly will limit the scope of any potential energy conservation standards for such equipment in a related energy conservation standard rulemaking.

Further, consistent with the December 2015 DPPP Working Group recommendations, DOE proposes definitions for rigid-electric and storable-electric spa pumps as a variety of dedicated-purpose pool pump in this test procedure NOPR, but is not prescribing test procedures or reporting requirements for them. In response to HI's comment regarding the applicability of the ESCC definition to spa pumps, DOE notes that any pumps meeting the definition of dedicated-purpose pool pumps are excluded from the ESCC definition (see section III.A.1), including rigid-electric or storable-electric spa pumps, as well as self-priming and non-self-priming pool filter pumps that may be installed in spas. However, DOE notes that self-priming and non-self-priming pool filter pumps that may be installed in spas, but are not storable or rigid electric spa pumps, would still be subject to the test procedure as self-priming or non-self-priming pool filter pumps, respectively, regardless of the application.

In addition, upon further review of the DPPP market and any potentially similar pumps, DOE determined that some end suction, submersible pond pumps may meet the definition of self-priming or non-self-priming pool filter pump, but were not reviewed by the DPPP Working Group and were not intended by the DPPP Working Group to be in the scope of this rulemaking. In order to exclude these pumps from this regulation, DOE proposes to exclude submersible pumps from the scope of the DPPP test procedure. To accomplish this, DOE proposes to define a "submersible pump" as "a pump that is designed to be operated with the motor and bare pump fully submerged in the pumped liquid."

The specific test methods proposed for each of the applicable DPPP varieties is discussed in more detail in section III.C.

DOE requests comment on the proposed scope of applicability of the DPPP test procedure.

7. Definitions Related to Dedicated-Purpose Pool Pump Speed Configurations and Controls

In addition to definitions of dedicated-purpose pool pump and the specific DPPP varieties, DOE also proposes to establish definitions to further differentiate certain varieties of dedicated-purpose pool pumps based on the speed configuration of the motor and/or the presence of controls on the DPPP model as distributed in commerce. The following subsections discuss definitions for the various DPPP speed configurations and the applicability of control definitions to dedicated-purpose pool pumps.

Currently, dedicated-purpose pool pumps are distributed in commerce with a variety of motor speed configurations (*e.g.,* single-speed, two-speed, multi-speed, or variable-speed). The DPPP Working Group recommended that DOE establish different test points for each speed configuration in the DPPP test procedure, in order to best represent the different energy use patterns exhibited by each configuration (see section III.C). (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendations #6, 7 at p. 5) Therefore, DOE proposes specific definitions to establish the appropriate test method and load points for applicable dedicated-purpose pool pumps.

In the second round of DPPP Working Group meetings, the DPPP Working Group discussed and ultimately recommended definitions for the following speed configurations for dedicated-purpose pool pumps: Single-speed, two-speed, multi-speed, and variable-speed. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5A at p. 3) These definitions would enable each speed configuration to be identified and tested using the most appropriate test method based on (1) the number of operating speeds available on the pump; (2) the minimum operating speed, or turn-down ratio,[23] on the pump; (3) the pump's ability to connect to a pool pump control; and/or (4) the characteristics of that pool pump control. The DPPP Working Group recommended the following definitions:

- *Single-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at only one speed.
- *Two-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at only two different, pre-determined operating speeds, where the low operating speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce either: (1) With a pool pump control (*i.e.,* variable speed drive and user interface or switch) that sets the speed in response to user preferences or (2) without a pool pump control that has such capability but is unable to operate without the presence of such a pool pump control.
- *Multi-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at more than two discrete pre-determined operating speeds separated by speed increments greater than 100 rpm, where the lowest speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce with an on-board pool pump control (*i.e.,* variable speed drive and user interface or programmable switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times.

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[23] The turn-down ratio for multi-speed pumps, including two-speed pumps, describes the ability of the pump to decrease speed relative to the maximum operating speed and is calculated as the maximum operating speed over the minimum operating speed of the pump.

- *Variable-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at a variety of user-determined speeds, where all the speeds are separated by at most 100 rpm increments over the operating range and the lowest operating speed is less than or equal to one-third of the maximum operating speed and greater than zero. Such a pump must include a variable speed drive (*i.e.,* equipment capable of varying the speed of the motor) and be distributed in commerce either: (1) With a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a user interface but is unable to operate without the presence of a user interface. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5A at p. 3)

In addition to the number of speeds available on any given pump, the DPPP Working Group's recommended definitions contain minimum operating speeds for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps. Specifically, the DPPP Working Group recommended a minimum speed less than or equal to half of the maximum operating speed for two-speed and multi-speed dedicated-purpose pool pumps and a minimum operating speed less than or equal to one-third of the maximum operating speed for variable-speed dedicated-purpose pool pumps.[24] This is generally consistent with ANSI/APSP/ICC–15a–2013,[25] CA Tile 20,[26] and ENERGY STAR,[27] which require that, in order to be considered two-speed, multi-speed, or variable-speed equipment, dedicated-purpose pool pumps must have the capability of operating at two or more speeds with the low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate.

Further, the DPPP Working Group also recommends that in order to be considered a variable-speed dedicated-purpose pool pump, such a pump must be capable of operating in speed increments of at most 100 rpm, when installed with an applicable pool pump control. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5A at p. 3) Conversely, if such a pump is only able to operate with speed increments greater than 100 rpm, then that pump would be considered a multi-speed pump (assuming it meets all other previously discussed requirements). The minimum operating speed and spacing requirements in two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps ensure that the test procedure for these speed configurations results in representative energy performance. That is, unless the low operating speed is consistent with or below the specified minimum operating speed, and the speed increment requirements are met, the DPPP Working Group did not believe that the load points and weights specified for variable-speed dedicated-purpose pool pumps (presented in section III.C.1) would be representative. (Docket No. EERE–2015–BT–STD–0008, No. 95 at pp. 129–146)

Finally, the definitions recommended by the DPPP Working Group contain requirements regarding the presence and operating characteristics of a pool pump control. In the field, two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps require controls to enable operation at all available speeds. In their discussions, the DPPP Working Group acknowledged that most two-speed dedicated-purpose pool pumps are currently distributed in commerce without controls, as such pumps are typically intended to be paired with new or existing two-speed controls. Similarly, the DPPP Working Group acknowledged that variable-speed and some multi-speed dedicated-purpose pool pumps are currently distributed in commerce without a user interface (a type of control), as such pumps are typically intended to be paired with new or existing pool automation systems in the field. (Docket No. EERE–2015–BT–STD–0008, No. 95 at pp. 40–62, 76–79, 82–111; 129–147).

Certain members of the DPPP Working Group voiced concern that if two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps were distributed in commerce without any form of control or user interface, there would be a significant risk that such pumps would not be paired with an applicable pool pump control in the field and would not achieve the performance and potential energy savings represented by the WEF metric. (Docket No. EERE–2015–BT–STD–0008, No. 91 at pp. 141–183) Therefore, to have reasonable assurance that the test points and resultant WEF metric for the various DPPP speed configurations would be representative of actual performance of the equipment in the field, the DPPP Working Group developed the recommended definitions to ensure that only those dedicated-purpose pool pumps that either: (1) Are distributed in commerce with a pool pump control or user interface (as applicable) or, (2) for two-speed and variable-speed dedicated-purpose pool pumps, requires the installation of such controls or user interface (as applicable) in order to operate would be able to be treated as two-speed, multi-speed, and variable-speed dedicated purpose pool pumps.

The DPPP Working Group developed the later requirement (that two-speed and variable-speed dedicated purpose pool pumps cannot operate without being installed with a pool pump control or user interface, as applicable) to accommodate those cases where a dedicated-purpose pool pump was intended to be installed into a residence with an existing pool pump control or user interface (as applicable) that met the stated requirements or may be paired with an applicable pool pump control or user interface in the field. In such cases, the dedicated-purpose pool pump would be allowed to be sold without the presence of a pool pump control or user interface (as applicable) so as not to burden the end-consumer with a duplicative pool pump control or user interface. However, to ensure that two-speed and variable-speed dedicated-purpose pool pumps would in all cases be installed and operated with an applicable pool pump control or user interface that enables the expected energy performance, the definitions require that these pumps be unable to operate without being connected to an applicable pool pump control or user interface in the field. Specifically, the Working Group recommended that the two-speed DPPP definition require such a pump to be distributed in commerce either: (1) With a pool pump control that has certain capabilities or (2) without a pool pump control that has those capabilities but is unable to operate without the presence of such a pool pump control. Similarly, the Working Group recommended that the variable-speed DPPP definition require such a pump to include a variable speed drive and be distributed in commerce either: (1) With a pool pump user interface with certain capabilities or (2) without a user interface but is unable to operate without the presence of a user interface. Conversely, the DPPP Working Group did not believe that this accommodation was necessary for multi-speed dedicated-purpose pool pumps and, as a result, multi-speed dedicated-purpose pool pumps are required to be distributed in commerce with an on-board control. DOE notes that, based on the proposed definition, multi-speed dedicated-purpose pool pumps would be required to have an on-board control when distributed in commerce, which includes when the pump is imported into the United States.

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[24] DOE notes that the requirement for variable-speed dedicated-purpose pool pumps would be applicable to the dedicated-purpose pool pump, when equipped with an applicable pool pump control, as the minimum operating speed will typically be dictated by the control. That is, the pump must inherently be capable of being turned down to such a speed, provided a control that is also capable of being turned down to a speed of less than or equal to one-third of the maximum speed.

[25] Section 4.1.1.2.

[26] Cal. Code Regs., tit. 20 section 1605.3, subd. (g)(5).

[27] ENERGY STAR Pool Pumps—Program Requirements Version 1.1. Available at *https://www.energystar.gov/products/spec/pool_pumps_specification_version_1_0_pd.*

While the DPPP Working Group's recommended definitions for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps all reference the presence and operating characteristics of pool pump controls, the applicable types of controls vary among the definitions. In the definition of variable-speed dedicated-purpose pool pump, the definition refers to the terms "variable speed drive" and "user interface," where the terms "variable speed drive" and "user interface" refer to a specific variety of pool pump control. Conversely, in the case of two-speed and multi-speed dedicated-purpose pool pumps, the recommended definitions allow for an additional variety of pool pump controls, namely switches, which are applicable to such equipment.

In addition, the definitions of multi-speed and variable-speed dedicated-purpose pool pump require the applicable pool pump control to be programmable such that users may select the duration of each speed and/or the on/off times and the pump will automatically operate according to that schedule without manual intervention. Both of these definitions are meant to capture pool pump controls and user interfaces that allow the user to schedule the periods of time the pool pump is operating at any given speed, as well as when the pump turns on and turns off. Pool pump controls and user interfaces that, for example, merely enable the user to set a duration of operation at high speed and then default to low speed operation, but do not allow the user to pre-determine when the pump would turn on and off would not meet the definition of multi-speed or variable-speed dedicated-purpose pool pump. (Docket No. EERE–2015–BT–STD–0008, No. 92 at pp. 222–231)

Conversely, for two-speed dedicated-purpose pool pumps, the DPPP Working Group recommended that the definition include the requirement that the pool pump control be capable of changing the speed in response to user preferences, but did not recommend that such controls must operate on a pre-programmed schedule. As such, the functionality required for two-speed pool pump controls may be accomplished by an automated, pre-programmed, timer-based control and user interface or a simple manual switch that would require the user to physically switch between the low and high operating speeds. The DPPP Working Group accommodated more simplistic controls for two-speed dedicated-purpose pool pumps based on the fact that most two-speed dedicated-purpose pool pumps available in the market today are not currently sold with any integrated control. (Docket No. EERE–2015–BT–STD–0008, No. 92 at pp. 215–222)

The pool pump control varieties, pool pump control operating characteristics, and requirements regarding the inclusion of pool pump controls applicable to each DPPP speed configuration are summarized in Table III.2.

TABLE III.2—SUMMARY OF APPLICABLE POOL PUMP CONTROL VARIETIES AND RELATED REQUIREMENTS FOR EACH DPPP SPEED CONFIGURATION

DPPP Speed configuration definition	Applicable pool pump control varieties	Pool pump control must be pre-programmable	Inclusion of pool pump controls as distributed in commerce
Two-Speed	• Variable speed drive and user interface or • Switch	No	Included or DPPP model cannot operate without being installed with such controls.
Multi-Speed	• Variable speed drive and user interface or • Switch	Yes	Included and on-board.
Variable-Speed	• Variable speed drive and user interface	Yes	Included or DPPP model cannot operate without being installed with such controls.

However, to ensure that the more accommodating requirements for pool pump controls in the two-speed DPPP definition would not result in an inadvertent loophole and/or bias in the market for DPPP varieties where two-speed dedicated-purpose pool pumps may be the least efficient option, the DPPP Working Group recommended additional provisions for larger two-speed self-priming pool filter pumps. Specifically, in order to use the two-speed DPPP test procedure (described in section III.C.1.b), the DPPP Working Group recommended that self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower and that are two-speed must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control with such capability but is unable to operate without the presence of such a pool pump control. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5B at p. 3). This is discussed in more detail in section III.C.1.e.

In this NOPR, DOE proposes to adopt the definitions for single-speed, two-speed, multi-speed, and variable-speed dedicated-purpose pool pump as proposed by the DPPP Working Group, with a few minor modifications. DOE notes that the definition of variable-speed dedicated-purpose pool pump recommended by the DPPP Working Group clarifies the meaning of the term variable speed drive as describing "equipment capable of varying the speed of the motor," while the definitions of two-speed and multi-speed dedicated-purpose pool pump also reference this term but do not contain such a clarification. Therefore, to clarify the meaning of variable speed drive and ensure that such clarification is applicable to all DPPP speed configurations, DOE proposes to establish a definition for variable speed drive, for the purposes of applying the DPPP test procedure, as equipment capable of varying the speed of the motor that removes the clarifying parenthetical (''equipment capable of varying the speed of the motor''). DOE believes the terms ''user interface'' and ''switch'' are unambiguous and well-understood in the industry and, therefore, do not require explicit definitions.

DOE requests comments on these proposed definitions for single-speed, two-speed, multi-speed, and variable-speed dedicated-purpose pool pump.

DOE also requests comment on any additional criteria or specificity that might be required in the definitions to effectively differentiate the various speed configurations for different DPPP varieties.

For dedicated-purpose pool pumps distributed in commerce with applicable pool pump controls, the DPPP Working Group considered additional requirements if the controls also include ''freeze protection controls.'' Freeze protection controls are controls that, at a certain ambient temperature, turn on the dedicated-purpose pool pump to circulate water for a period of time to prevent the pool and water in plumbing from freezing. As the control schemes for freeze protection vary widely between manufacturers, the resultant energy consumption associated with such control can also vary depending on control settings and climate. To ensure freeze protection controls on dedicated-purpose pool pumps only operated when necessary and did not result in unnecessary, wasted energy use, the DPPP Working Group discussed and ultimately recommended establishing prescriptive requirements for dedicated-purpose pool pumps that are distributed in commerce with freeze protection controls. Specifically, the DPPP Working Group recommended that all dedicated-purpose pool pumps distributed in commerce with freeze protection controls be shipped either:

(1) With freeze protection disabled or

(2) with the following default, user-adjustable settings:

a. The default dry-bulb air temperature setting is no greater than 40 °F; and

b. The default run time setting shall be no greater than 1 hour (before the temperature is rechecked); and

c. The default motor speed shall not be more than ½ of the maximum available speed.

(Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4).

In order to identify dedicated-purpose pool pumps with freeze protection controls for which the recommended prescriptive requirements would be applicable, DOE proposes to define ''freeze protection controls'' as ''pool pump controls that, at a certain ambient temperature, turn on the dedicated-purpose pool pump to circulate water for a period of time to prevent the pool and water in plumbing from freezing.''

DOE requests comment on the proposed definition for freeze protection controls.

8. Basic Model

In the course of regulating consumer products and commercial and industrial equipment, DOE has developed the concept of a ''basic model'' to determine the specific product or equipment configuration(s) to which the regulations would apply. For the purposes of applying the proposed DPPP regulations, DOE also proposes to define what constitutes a ''basic model'' of a dedicated-purpose pool pump. Applying this basic model concept would allow manufacturers to group similar models within a basic model to minimize testing burden, while ensuring that key variables that differentiate DPPP energy performance and/or utility are maintained as separate basic models. In other words, manufacturers would need to test only a representative number of units of a basic model in lieu of testing every model they manufacture. However, manufacturers may only group individual models of dedicated-purpose pool pumps that are reasonably similar; that is, only dedicated-purpose pool pumps from the same equipment class may be grouped together. In addition, the represented performance for all models within a basic model must be based on the tested performance of the least efficient model.

In the January 2015 general pumps TP final rule, DOE adopted a definition for a ''basic model'' of pump that provided additional specifications regarding the characteristics that differentiate basic models, including variation in number of stages for multistage pumps, variation in impeller trim, and variation in motor horsepower resulting from differences in number of stages or impeller trim. 81 FR 4086, 4092–94 (Jan. 25, 2016).

DOE proposes to amend the definition of ''basic model'' for pumps established in the January 2016 general pumps TP final rule to also accommodate dedicated-purpose pool pumps. DOE notes that many of the specific accommodations in the basic model definition regarding number of stages for multistage pumps and trimmed impellers are applicable only to those general pumps that were the subject of the January 2016 general pumps TP final rule. 81 FR 4086 (Jan. 25, 2016). DOE understands that dedicated-purpose pool pumps are exclusively single-stage pumps and, therefore, the provision regarding variation in number of stages is not applicable. Furthermore, DOE understands that each DPPP model is offered with only one impeller diameter, unlike general pumps for which a given pump model may be sold with many different impeller diameters that are customized for each application. Therefore, DOE believes that the provision for grouping individual pumps that vary only in impeller diameter, or impeller trim, is also not applicable to dedicated-purpose pool pumps; any variation in impeller trim would constitute a separate basic model for dedicated-purpose pool pumps. Finally, as neither the multistage nor impeller trim specifications for basic model designation apply to dedicated-purpose pool pumps, the provision regarding variation in motor horsepower resulting from variation in either of those characteristics also does not apply to dedicated-purpose pool pumps.

Therefore, DOE proposes to adopt only the general provisions of the current pump basic model definition that are applicable to dedicated-purpose pool pumps, which includes all units of a given product or equipment type (or class thereof) manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency. In addition, DOE proposes to clarify that the specific provisions regarding number of stages, impeller trim, and variation in motor horsepower as a result of those characteristics adopted in the pumps basic model definition are only applicable to the general pumps addressed by the January 2015 general pumps TP and ECS final rule, for which standards are specified in 10 CFR 431.465(b). 81 FR 4086 (Jan. 25, 2016) and 81 FR 4368 (Jan. 26, 2016).

DOE requests comment on the proposed definition of ''basic model.''

In addition, DOE requests comment on any characteristics unique to dedicated-purpose pool pumps that may necessitate modifications to the proposed definition of ''basic model.''

B. Rating Metric

One of the first and most important issues DOE must consider in designing a test procedure is the selection of the regulatory metric. In selecting an appropriate metric for dedicated-purpose pool pumps, the DPPP Working Group reviewed applicable metrics currently employed by existing regulatory and voluntary programs for dedicated-purpose pool pumps in the United States and internationally. Ultimately, the DPPP Working Group recommended using a new metric, the WEF, as the regulatory metric for dedicated-purpose pool pumps. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #5 at p. 4) A review of the existing regulatory programs are discussed in more detail in section III.B.1 and the proposed WEF metric is presented in section III.B.2.

1. Review of Current DPPP Regulatory and Voluntary Programs

In considering a metric for dedicated-purpose pool pumps, the DPPP Working Group conducted research to identify what, if any, DPPP-related regulatory and voluntary programs currently exist. DOE identified one regulatory program, first adopted by the California Energy Commission (CEC) and subsequently implemented in a number of other States,[28] and three domestic voluntary pool pump programs by APSP, the Consortium for Energy Efficiency (CEE), and ENERGY STAR that are relevant to dedicated-purpose pool pumps. DOE also identified international pool pump programs established in Australia and New Zealand, as well as DOE's own January 2016 general pumps TP final rule. 81 FR 4086 (Jan. 25, 2016).

The majority of existing regulatory and voluntary programs in the United States for dedicated-purpose pool pumps focus on energy factor (EF) as the key metric for describing performance. Some programs also establish prescriptive requirements related to the construction of DPPP motors. Specifically, Article 4 of Chapter 4 of Title 20 of the California Code of Regulations, "Appliance Efficiency Regulations," (CA Title 20);[29] ANSI/APSP/ICC–15a–2013;[30] the CEE Residential Swimming Pool Initiative;[31] and ENERGY STAR[32] all require testing and reporting of EF and other pump performance parameters at a variety of load points, specified in terms of up to three systems curves (curves A, B, and C) and up to four speeds (minimum, maximum, half, and most efficient speed). In addition to EF, three of these programs (*i.e.*, CA Title 20, ANSI/APSP/ICC–15a–2013, and ENERGY STAR) require reporting of nominal motor speed, flow, and input power at the specified load points based on testing in accordance with ANSI/HI 1.6–2000.[33] The three unique system curves (curve A, curve B, and curve C) are described by equations in terms of head and flow, as shown in Table III.3, and were developed to be representative of 2.0-inch, 1.5-inch, and 2.5-inch diameter plumbing, respectively.[34]

TABLE III.3—PUMP SYSTEM CURVE FORMULAS

Curve	Formula
A	Head (feet) = 0.0167 × Flow^2 (gpm)
B	Head (feet) = 0.050 × Flow^2 (gpm)
C	Head (feet) = 0.0082 × Flow^2 (gpm)

The majority of programs reference and require reporting on each of curves A, B, and C; however, programs differ in the number of operating speeds that are required to be tested. For example, CA Title 20 requires manufacturers to report all applicable quantities[35] on each curve at maximum speed only for single-speed dedicated-purpose pool pumps and at both maximum and minimum speeds for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps. Cal. Code Regs. section1604, subd. (g). Conversely, ANSI/APSP/ICC–15a–2013 requires testing at maximum speed for single-speed pumps; all available speeds for multi-speed pumps (including two-speed pumps); and maximum, minimum, half, and most efficient speed for variable-speed dedicated-purpose pool pumps.[36] The load points specified by each program are summarized in Table III.4.

TABLE III.4—SUMMARY OF LOAD POINTS REQUIRED BY CA TITLE 20, ANSI/APSP/ICC–15A–2013, ENERGY STAR, AND CEE

Pump speed(s)	CA title 20	ANSI/APSP/ICC–15a–2013	ENERGY STAR	CEE
Single-speed	Max Speed on Curves A, B, & C.	Max Speed on Curves A, B, & C.	Max Speed on Curves A, B, & C.	N/A.*
Two-speed	Max and Min Speed on Curves A, B, & C.	Max and Half Speed on Curves A, B, & C.	Max and Half Speed on Curves A, B, & C.	Max and Half Speed on Curve A.
Multi-speed	Max and Min Speed on Curves A, B, & C.	All Available Speed on Curves A, B, & C.	All Available Speed on Curves A, B, & C.	Max and Half Speed on Curve A.

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[28] See, *e.g.* Ariz. Rev. Stat. section 44–1375 (2015); Conn. Agencies Regs. section 16a–48.4 (2015); Fla. Stat. Ann. section 533.909 (2015); and Wash. Rev. Code Ann. section 19.260.040 (2015).

[29] California Energy Commission (CEC). Chapter 4: Energy Conservation, Article 4: Appliance Efficiency Regulations. In *California Code of Regulations Title 20. Public Utilities and Energy.* § 1601 1608. March 28, 2014. CEC–140–2014–002. *www.energy.ca.gov/2014publications/CEC-140–2014–002/CEC–140–2014–002.pdf* . A 2015 update to the CEC Title 20 Appliance Efficiency Regulations was released in July 2015. CEC–400–2015–021. *http://www.energy.ca.gov/2015publications/CEC-400-2015-021/CEC-400-2015-021.pdf.*

[30] Section 4.1.2 of ANSI/APSP/ICC–15a–2013.

[31] Consortium for Energy Efficiency (CEE). *CEE High Efficiency Residential Swimming Pool Initiative.* December 2012. *http://library.cee1.org/sites/default/files/library/9986/cee_res_swimmingpoolinitiative_07dec2012_pdf_10557.pdf.*

[32] ENERGY STAR Program Requirements Product Specifications for Pool Pumps, Final Test Method. Rev. Jan–2013. *https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf.*

[33] DOE notes that CA Title 20 actually requires that measurements of pump efficiency be conducted in accordance with ANSI/HI 1.6–2000, but does not explicitly extend this requirement to measured speed, flow, and input power, which are the variables necessary to calculate EF. Cal. Code Regs. section1604, subd. (g).

[34] PG&E developed curves A, B, and C based data from an exercise by ADM Associates, Inc. in 2002, *EVALUATION OF YEAR 2001 SUMMER INITIATIVES POOL PUMP PROGRAM* and contractor input. However, the actual data for the curves are not contained in the ADM report (the ADM report can be found at *www.calmac.org/publications/SI_Pool_Pump.pdf;* Last accessed April 4, 2016). Curves A and B are first formally mentioned in a subsequent report by PG&E in *Codes and Standards Enhancement Initiative for FY 2004.* However, this report does not discuss the derivation of the curves. (*http://consensus.fsu.edu/FBC/Pool-Efficiency/CASE_Pool_Pump.pdf*; Last accessed April 29, 2016). In addition, section 4.1.2.1.3 of ANSI/APSP/ICC–15a–2013 describes curves A, B, and C as "approximately" representative of 2.0-inch, 1.5-inch, and 2.5-inch pipe, respectively.

[35] CA Title 20 requires reporting of motor nominal speed (rpm), flow (gpm), power (W and volt amps (VA)), EF (gal/Wh). Cal. Code Regs. section 1606, subd. (a).

[36] Sections 4.1.2.1.4–4.1.2.1.6 of ANSI/APSP/ICC–15a–2013.

TABLE III.4—SUMMARY OF LOAD POINTS REQUIRED BY CA TITLE 20, ANSI/APSP/ICC–15A–2013, ENERGY STAR, AND CEE—Continued

Pump speed(s)	CA title 20	ANSI/APSP/ICC–15a–2013	ENERGY STAR	CEE
Variable-speed ..	Max and Min Speed on Curves A, B, & C.	Max, Min, Half, and Most Efficient Speed on Curves A, B, & C.	Max, Min, and Most Efficient Speed on Curves A, B, & C.	Max, Half, and Most Efficient Speed on Curve A.

* CEE requires applicable pool pumps to meet an EF requirement at both a high and low speed and, therefore, single-speed pool pumps are not eligible for CEE qualification.

In addition to requiring measurement and reporting of DPPP performance characteristics, CA Title 20,[37] APSP/ANSI/ICC–15a–2013,[38] ENERGY STAR,[39] and CEE[40] contain prescriptive requirements regarding the design and characteristics of the DPPP motor and controls. Specifically, CA Title 20, ANSI/APSP/ICC–15a–2013, and ENERGY STAR all require that DPPP motors must:

(1) Have the capability of operating at two or more speeds, where the "low" speed has a rotation rate that is no more than one-half of the motor's maximum rotation rate, if the motor is 1 hp or greater;

(2) be operated with an applicable multi-speed pump control with a default circulation speed no more than one-half of the motor's maximum rotation rate and whose high speed override capability, if available, does not extend for a period exceeding 24 hours; and

(3) have their efficiency reported, as measured in accordance with the test method of the Institute of Electrical and Electronics Engineering (IEEE) 114–2001.

CA Title 20 also requires that DPPP motors not be split-phase or capacitor start-induction run-type motors. Cal. Code Regs. section 1605.3, subd. (g) and section 1604, subd. (g).

In addition to the testing and prescriptive design requirements, ENERGY STAR[41] and CEE[42] also specify performance requirements based on EF at specified speed points on curve A only.[43] The ENERGY STAR and CEE requirements are specified in Table III.5 and Table III.6, respectively. CA Title 20[44] and APSP/ANSI/ICC–15a–2013 do not currently have any minimum energy performance requirements (*i.e.*, these programs do not specify a minimum EF requirement).

TABLE III.5—TABLE ENERGY STAR POOL PUMP ENERGY FACTOR CRITERIA AT POOL PUMP PERFORMANCE CURVE A *

Pump sub-variety	Speed setting	Energy efficiency level gal/Wh
Single-Speed Pump	Single-Speed	EF ≥3.80
Multi-Speed, Variable-Speed and Variable-Flow Pump	Most Efficient Speed	EF ≥3.80

* Although the ENERGY STAR test method requires the testing and reporting of EF and other DPPP performance metrics at curves A, B, and C at various speed points, the ENERGY STAR specification is only applied on curve A at a single speed point.

TABLE III.6—CEE TIER 1 AND 2 EF REQUIREMENTS

Efficiency level	Lower speed * EF gal/Wh	Low speed ** EF gal/Wh	High speed † EF gal/Wh
CEE Tier 1	No Requirement	≥3.8	≥1.6
CEE Tier 2	≥12.0	≥5.5	≥1.7

* Where "lower speed" is the optimal or most efficient speed for the pool pump, likely ranging from 600 to 1,200 RPM.
** Where "low speed" is either the minimum speed for two-speed pumps or half the maximum speed for variable-speed pumps, typically 1,725 RPM.
† Where "high speed" is the maximum operating speed of the pump, usually 3,450 RPM.

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[37] Cal. Code Regs. section 1605.3, subd. (g) and section 1604, subd. (g).

[38] Sections 4.1.1, "Motors," and 4.2, "Pump controllers" of ANSI/APSP/ICC–15a–2013.

[39] ENERGY STAR Pool Pumps—Program Requirements Version 1.1. Available at *https://www.energystar.gov/products/spec/pool_pumps_specification_version_1_0_pd.*

[40] Consortium for Energy Efficiency (CEE). *High Efficiency Residential Swimming Pool Initiative: Pool Pump Control Specification.* January 1, 2013. *http://library.cee1.org/sites/default/files/library/9988/cee_residential_pool_pump_control_specification_29414.pdf.*

[41] ENERGY STAR Pool Pumps—Program Requirements Version 1.1. Available at *https://www.energystar.gov/products/spec/pool_pumps_specification_version_1_0_pd.*

[42] Consortium for Energy Efficiency (CEE). *High Efficiency Residential Swimming Pool Initiative: Pool Pump Specification.* January 1, 2013. Available at: *http://library.cee1.org/sites/default/files/library/9987/cee_residential_pool_pump_specification_90947.pdf.*

[43] DOE notes that, as acknowledged by Pentair during the DPPP Working Group meetings, while curve A is referenced in the CEE High Efficiency Residential Swimming Pool Initiative (see *http://library.cee1.org/sites/default/files/library/9986/cee_res_swimmingpoolinitiative_07dec2012_pdf_10557.pdf*), an error may have been made in establishing the CEE performance levels and that CEE is aware that some data were generated using curve C, where curve A was intended, resulting in the error. (Docket No. EERE–2015–BT–STD–0008, Pentair, No. 38, p. 135)

[44] Cal. Code Regs. section 1605.3, subd. (g) and section 1604, subd. (g).

Internationally, the Australia state and territory governments and the New Zealand government operate the Energy Rating Labeling Program that relies on Australian Standard (AS) 5102–2009, "Performance of household electrical appliances—Swimming pool pump—units, Parts 1 and 2" (AS 5102–2009) as the basis for the efficiency levels and testing requirements for residential pool pumps. The minimum energy performance standard in part 2 of AS 5102–2009 is stated in terms of a minimum EF at a single load point on a new, curve D, shown in Table III.7. The current MEPS is 8 liters/watt-hour (2.09 gal/Wh).

TABLE III.7—CURVE D DEFINITION

Metric equivalent	Imperial unit equivalent*
H (m) = 0.00018 Flow (L/min).**	H (ft) = 0.0084 x Flow (gpm).**

*1 liter/minute = gallons/minute.
**1 meter (pressure) = feet (pressure).

Finally, DOE notes that in January 2016, DOE published the January 2016 general pumps TP final rule in which DOE established definitions, sampling plans, and a test procedure applicable to pumps. 81 FR 4086 (Jan. 25, 2016). DOE established a new metric, the pump energy index (PEI), to rate the energy performance of pumps subject to that test procedure. 81 FR 4086, 4104–4109 (Jan. 25, 2016). That test procedure contains methods for determining pump energy index for continuous loads (PEI_{CL}) for pumps sold without continuous or non-continuous controls, and the pump energy index for variable loads (PEI_{VL}) for pumps sold with either continuous or non-continuous controls. Both PEI_{CL} and PEI_{VL} describe the weighted average performance of the rated pump at specific load points, normalized with respect to the performance of a minimally compliant pump without controls. *Id.* Both PEI_{CL} and PEI_{VL} can be generally evaluated as the weighted average input power to the motor or controls, if available, at specific load points over the weighted average input power to a pump and motor that is minimally compliant with DOE's energy conservation standards for general pumps established in a final rule also published in January 2016 serving the same hydraulic load. 81 4086, 4104–4109 (Jan. 25, 2016) (January 2016 general pumps TP final rule) and 81 FR 4368 (Jan. 26, 2016) (January 2016 general pumps ECS final rule).

2. Proposed Metric: Weighted Energy Factor

In developing an appropriate metric for dedicated-purpose pool pumps, the DPPP Working Group reviewed the applicable metrics (*i.e.*, PEI, EF, WEF) and considered the advantage and disadvantages of each. Overall, DOE discussed with the DPPP Working Group the key objectives of any DPPP metric, including that it (1) be objectively measurable, (2) be representative of the energy use or energy efficiency of dedicated-purpose pool pumps, (3) provide an equitable differentiation of performance among different DPPP models and technologies, (4) be able to compare the energy efficiency of a given DPPP model to a minimum standard level, and (5) provide the necessary and sufficient information for purchasers to make informed decisions regarding DPPP selection. (Docket No. EERE–2015–BT–STD–0008, No. 38 at pp. 207–208)

The DPPP Working Group focused on defining a performance-based metric that is similar to EF metric currently used to describe DPPP performance by many existing programs, as presented in III.B.1, but that also accounts for the potential energy savings of equipment with multiple operating speeds. (Docket No. EERE–2015–BT–STD–0008, No. 38 at pp. 211–213) Specifically, the DPPP Working Group considered developing a metric that is a weighted average of the performance of a dedicated-purpose pool pumps at multiple speed points along a representative system curve. Ultimately, the DPPP Working Group recommended using the weighted energy factor (WEF), which is defined as the ratio of the flow provided by the pump, divided by the input power to the pump, at one or more load points, where these load points are selected depending on the specific DPPP variety and speed configuration, as shown in equation (1). (Docket No. EERE–2015–BT–STD–0008, No. 38 at pp. 209–223)

The DPPP Working Group recommended weighting the measured flow and power individually in the numerator and denominator, respectively, instead of first calculating the EF at each load points and then weighting the calculated EF values at each load point together. The DPPP Working Group believed that weighting the individual flow and input power points instead of the EF values would be more representative of the relative energy performance of DPPP models. In particular, the DPPP Working Group determined that calculating the weighted average flow over the weighted average input power, as proposed, would result in a relative improvement in energy efficiency between single-speed, two-speed, multi-speed, and variable-speed equipment commensurate with that likely to be experienced in the field. Conversely, weighting the EF values directly would exaggerate the improvement resulting from variable speed technology. (Docket No. EERE–2015–BT–STD–0008, ASAP, No. 48 at pp. 1–2; No. 57 at pp. 25–60)

The equation for WEF is shown in the equation (1):

$$\mathrm{WEF} = \frac{\sum_{i=1}^{n}\left(w_i \times \frac{Q_i}{1000} \times 60\right)}{\sum_{i=1}^{n}\left(w_i \times \frac{P_i}{1000}\right)} \qquad \textbf{(1)}$$

Where:

WEF = weighted energy factor in kgal/kWh;
w_i = weighting factor at each load point i;
Q_i = flow at each load point i in gal/min;[45]
P_i = input power to the motor (or controls, if present) at each load point i in W;
i = load point(s), defined uniquely for each DPPP variety; and
n = number of load point(s), defined uniquely for each speed configuration.
(Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation # 5 at p. 4)

The specific load points and weights for each DPPP variety are discussed in section III.C.

As seen in equation (1), this metric would be expressed in terms of kilogallons per kilowatt-hour (kgal/kWh), similar to the EF metric. Regarding the units of the WEF metric, members of the DPPP Working Group suggested that the values of flow and power be determined in gallons and watts, respectively, but the resultant WEF metric be represented in terms of kgal/kWh. DOE notes that this is inconsistent with the EF metric, which represents in terms of gal/Wh, but is numerically identical because both the numerator and denominator are scaled consistently. Pentair stated that, because pools are often discussed in terms of thousands or tens of thousands of gallons, the pool industry often does not understand EF until it is explained as the ability to pump 10,000 gallons for 1 kilowatt-hour of energy. (Docket No. EERE–2015–BT–STD–0008, Pentair No. 59 at p. 132) Therefore, the DPPP Working Group recommended dividing the numerator and denominator by 1,000, to translate the flow, in gallons, and power, in W, to kilogallons and kW, respectively to facilitate the calculation of WEF in kgal/kWh, which are units that may be more readily understood by both the industry and the market.

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[45] $P_{i,j}$ and $Q_{i,j}$ are determined in accordance with December 2015 DPPP Working Group recommendations. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #8 at p. 6) See section III.D for a discussion of this methodology.

DOE agrees with the DPPP Working Group that the recommended WEF metric, as shown in equation (1), provides a representative, objective, and informative characterization of DPPP performance. As such, based on the recommendations of the DPPP Working Group, DOE proposes to adopt the WEF metric as the performance-based metric for representing the energy performance of certain styles of dedicated-purpose pool pumps. DOE notes that any standards considered for any dedicated-purpose pool pumps for which the WEF applies would use this metric as a basis for the standard level. However, as discussed in section III.A.6, DOE notes that the WEF metric only is applicable to the varieties of dedicated-purpose pool pumps for which the DPPP Working Group recommends performance standards.

DOE requests comment on its proposal to adopt WEF as the metric to characterize the energy use of certain dedicated-purpose pool pumps and on the proposed equation for WEF.

C. Test Methods for Different DPPP Categories and Configurations

As discussed in section III.B.2, DOE proposes to characterize the performance of dedicated-purpose pool pumps according to the WEF, which is calculated as the weighted average of the flow over the weighted average of the input power, each measured at different speeds and load points. Due to differences in equipment design and typical use profiles, the DPPP Working Group recommended that weights and load points be specified uniquely for each DPPP variety and pump speed configuration. Specifically, the DPPP Working Group recommended unique load points for the various speed configurations (*e.g.*, single-speed, two-speed, multi-speed, or variable-speed dedicated-purpose pool pumps) of self-priming and non-self-priming pool filter pumps with a rated hydraulic horsepower less than 2.5 hp (section III.C.1), as well as waterfall pumps (section III.C.1.e) and pressure cleaner booster pumps (section III.C.3), which reference only a single load point. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #6 at p. 5) The load points and weights recommended by the DPPP Working Group in the December 2015 DPPP Working Group recommendations for each DPPP variety are summarized in Table III.8.

Table III.8. Summary of DPPP Working Group Recommended Load Points for DPPP Varieties and Speed Configurations.

DPPP Varieties	Speed Type	# of Points, n	Load Point, i	Test Points	
				Flow Rate Q (GPM)	**Head (Described by Reference System Curve), H (ft)**
Self-Priming Pool Filter Pumps And **Non-Self-Priming Pool Filter Pumps**	Single	1	High	$Q_{high}(gpm) = Q_{max\_speed@C}$ *	$H = 0.0082 \times Q_{high}^2$
	Two-Speed	2	Low	$Q_{low}(gpm) = 0.5 \times Q_{max\_speed@C} = 39.21 \text{ x } P_{hydro,max@C}(HP)^{1/3}$ (at half max speed)	$H = 0.0082 \times Q_{low}^2$
			High	$Q_{high}(gpm) = Q_{max\_speed@C} =$ Flow at max speed on curve C	$H = 0.0082 \times Q_{high}^2$
	Variable and Multi-Speed	2	Low	$Q_{low}(gpm)=$ • If pump hydraulic hp at max speed on curve C is >0.75, then $Q_{low} = 31.1$ gpm • If pump hydraulic hp at max speed on curve C is ≤0.75, then $Q_{low} = 24.7$ gpm (at lowest available speed to achieve this flow)	$H \geq 0.0082 \times Q_{low}^2$
			High	$Q_{high}(gpm) = 0.8 \times Q_{max\_speed@C}$ (at 80% max speed)	$H = 0.0082 \times Q_{high}^2$
Waterfall Pumps	Single	1	High	Flow corresponding to specified head (on max speed pump curve)	17 ft
Pressure Cleaner Booster Pumps	All	1	High	Flow corresponding to specified head (on max speed pump curve)	90 ft

* $Q_{max\text{-}speed@C}$ = Flow at max speed on curve C (gpm)

Subsequently, in the second round of negotiations, the DPPP Working Group reevaluated the recommended test procedure for pressure cleaner booster pumps. In the June 2016 DPPP Working Group recommendations, the DPPP Working Group recommended a revised load point of 10 gpm at the minimum head the pump can provide at or above 60 ft, where the pressure cleaner booster pump can vary speed to achieve the minimum head. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #8 at pp. 4–5).

The load points for each DPPP variety are defined as the intersection of the head values described by the reference system curve,[46] which describes the representative hydraulic characteristics of a typical installation for the specific DPPP variety, and the performance curve for any given dedicated-purpose pool pump at a given operating speed. Each intersection point, or load point, is specified in terms of head and flow. As each available operating speed on two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps represents a different performance curve, these pumps require multiple load points to effectively characterize their performance. The load points for self-priming and non-self-priming pool filter pump, waterfall pumps, and pressure cleaner booster pumps are discussed in the subsequent sections.

1. Self-Priming and Non-Self-Priming Pool Filter Pumps

This section identifies the different speed configurations, load points, and weighting factors for both self-priming and non-self-priming pool filter pumps. As noted in section III.A.3, self-priming and non-self-priming pool filter pumps have different construction characteristics and potentially different applications. However, during the Working Group meetings, the DPPP Working Group discussed how the performance of these two different varieties of pumps are comparable in most instances. In addition, the DPPP Working Group acknowledged that both varieties of pool filter pumps could theoretically be installed in either aboveground or inground pools, depending on the requirements of the particular application. (Docket No. EERE–2015–BT–STD–0008, No. 57 at pp. 329–331) Specifically, the CA IOUs noted that the pump curves from several manufacturers for aboveground pool filter pumps are similar to those for the manufacturers' respective inground pumps. (Docket No. EERE–2015–BT–STD–0008, CA IOUs, No. 57 at p. 329) In addition, the DPPP Working Group discussed how the referenced system curves A, B, and C primarily were developed based on inground pools, and that little data exists regarding the representative system curves for aboveground pools. (Docket No. EERE–2015–BT–STD–0008, Waterway, No. 39 at p. 54; Waterway, No. 53 at pp.146–147; CA IOUs, No, 53 at p. 147)

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[46] Note the "reference system curve" is a flat head value for waterfall pumps and pressure cleaner booster pumps.

To provide comparability between WEF ratings for self-priming and non-self-priming pool filter pumps, the DPPP Working Group recommended the same reference system curve for both self-priming and non-self-priming pool filter pumps. Specifically, the DPPP Working Group discussed how curve C, which pertains to 2.5-inch piping, is a reasonable representation of typical existing pool installations, and would only become more common as new pools typically are designed with 2.5-inch piping (curve C), instead of the more restrictive 1.5-inch (curve B) plumbing design that is more common in older pools. (Docket No. EERE–2015–BT–STD–0008, CA IOUs, No. 59 at p. 98; Hayward, No. 59 at pp. 106–107; Waterway, No. 53 at p. 146; DOE, No. 53 at pp. 147–148) Accordingly, consistent with the recommendations of the DPPP Working Group, DOE proposes that self-priming and non-self-priming pool filter pumps be tested at specific load points specified along curve C (see Table III.3).

DOE requests comment on its proposal to test self-priming and non-self-priming pool filter pumps at load points specified along curve C to determine the WEF for such pumps.

In addition to the specified system curve, the DPPP Working Group recommended specific operating speeds or flow points that would dictate the different load points for the different speed configurations of self-priming and non-self-priming pool filter pumps (see Table III.8). The specific load points for single-speed, two-speed, multi-speed, and variable-speed pool filter pumps are discussed in sections III.C.1.a, III.C.1.b, and III.C.1.c, respectively.

a. Single-speed Pool Filter Pumps

Single-speed pool filter pumps, by definition and design, are only capable of operating at one speed. Therefore, the DPPP Working Group recommended testing single-speed pool filter pumps at the pump's maximum, and only, speed of rotation on curve C. That is, the load point for single-speed pool filter pumps would be specified as the point of intersection between the pump's performance curve at its maximum speed and the system curve C, as shown in Figure III.2. DOE believes the load point recommended by the DPPP Working Group is representative of the performance of single-speed pool filter pumps and provides an equitable comparison among equipment.

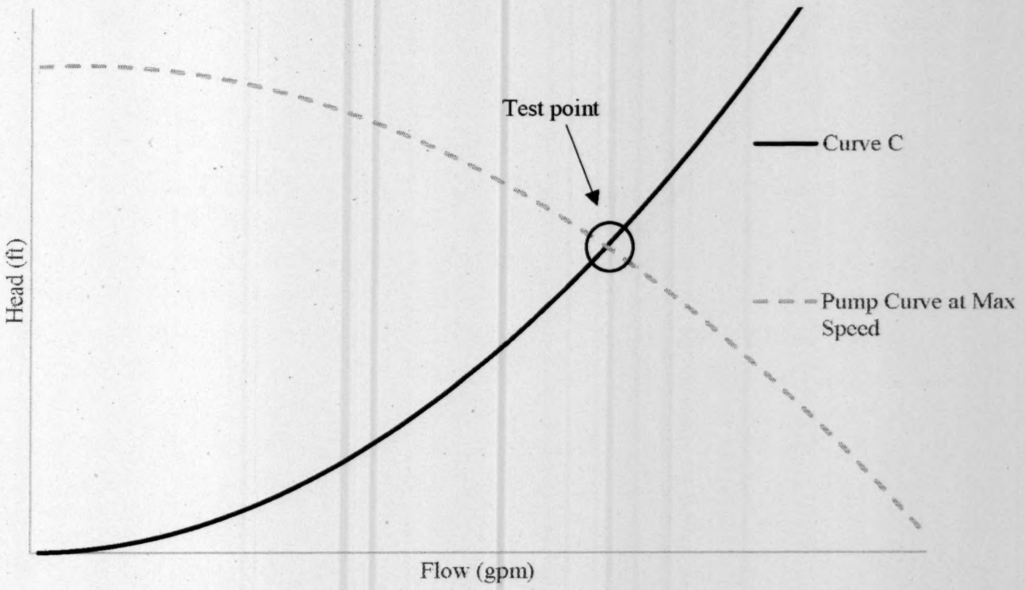

Figure III.2. Specified Load Point on Curve C at Maximum Speed for Single-Speed Self-Priming and Non-Self-Priming Pool Filter Pumps.

DOE requests comment on its proposal to test single-speed pool filter pumps at a single load point corresponding to the maximum speed for that pump on curve C.

b. Two-speed Pool Filter Pumps

Two-speed pumps, by definition and design, are capable of operating at two discrete speeds. As such, the DPPP Working Group recommended evaluating performance at two load points, which would capture the differing performance at the high and low speeds. The Working Group also agreed that these two load point are representative of the typical operation of two-speed pool filter pumps in the field. Specifically, the DPPP Working Group discussed that two-speed pool filter pumps perform two functions: (1) Long-term filtration at low speed and low flow to provide an adequate "turnover rate"[47] and (2) short-term cleaning or mixing at high speed and high flow to operate suction-side pool cleaners and ensure proper mixing of the water.[48] [49] [50] As discussed in section III.B.1, many of the existing regulatory and voluntary programs identified in the United States require that the low speed on two-speed pumps is at least 50 percent lower than the maximum, or high, speed of rotation. Consistent with typical two-speed pool filter pump design and the requirements of existing regulatory programs, the DPPP Working Group recommended testing two-speed pool filter pumps (1) at the load point corresponding to the pump's maximum speed of rotation on curve C and (2) at the load point corresponding to half of the maximum-speed flow rate with total dynamic head at or above curve C. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation # 6, at p. 5) Figure III.3 illustrates these test points.

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[47] The turnover rate is described in the pool industry (and defined in ANSI/APSP/ICC–15a–2013) as "the total number of times the entire volume of water in the pool is circulated (or "turned over") in a time period of 24 hours." For residential pools, ANSI/APSP/ICC–15a–2013 recommends a minimum turnover time of 12 hours, which results in a turnover rate of two. For commercial and public pools, requirements for turnover rates and times are typically set by local authorities.

To test applicable two-speed dedicated-purpose pool pumps at the low speed point, the pump operating speed should be reduced to the low-speed setting to achieve the specified flow rate. If the two-speed pump has a low-speed setting that is exactly one-half of the high speed setting, as is typical of pool filter pump design, the low-speed setting will result in a flow rate that is exactly one-half of the flow rate at maximum speed on curve C. In addition, the resultant head point will be exactly on curve C, as shown on the dashed line in Figure III.3.[51] However, this load point is only possible for pumps with the low-speed setting equivalent to one-half of the rotating speed of the maximum speed setting.

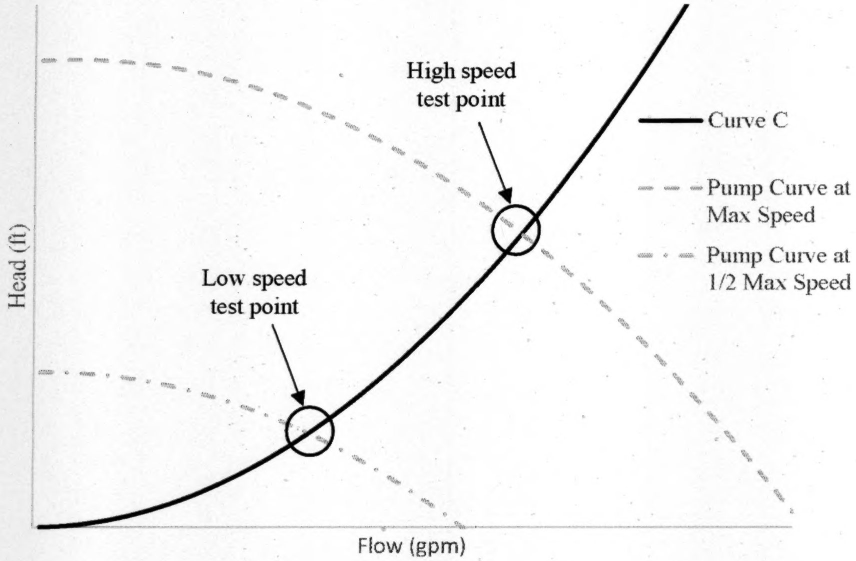

Figure III.3. Specified Load Points on Curve C at Maximum Speed for Two-Speed Self-Priming and Non-Self-Priming Pool Filter Pumps.

For any pool filter pumps that may have a low-speed setting lower than one-half of the maximum speed, the low-speed setting would not be able to achieve a flow rate of one-half the flow rate at maximum speed. Therefore, in order to achieve the specified flow point, such a pump would be required to operate at the high-speed setting and be throttled in order to achieve a flow rate of exactly one-half of the flow rate at maximum speed, as shown in Figure III.4 (option 1). This would result in a WEF that is lower (less efficient) than two-speed pumps with a low-speed setting that is exactly one-half of the maximum operating speed. Throttling the high-speed of a two-speed pump, rather than utilizing the low-speed, would not capture the actual efficiency, and thus the actual potential energy savings, of the pump when operated at low speed.

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[48] Rainer, L. *Proposal Information Template for: Residential Pool Pump Measure Revisions.* 2008. Prepared for PG&E. *www.energy.ca.gov/appliances/2008rulemaking/documents/2008-05-15_workshop/other/PGE_Updated_Proposal_Information_Template_for_Residential_Pool_Pump_Measure_Revisions.pdf.*

[49] SCE. *Commercial Variable Speed Pool Pump Market Characterization and Metering Study.* February 2015. *www.etcc-ca.com/sites/default/files/reports/et13sce1170_comm_vfd_pool_pumps_final.pdf.*

[50] CA IOUs. *Pools & Spas Codes and Standards Enhancement (CASE) Initiative for PY 2013: Title 20 Standards.* July 29, 2013. *http://www.energy.ca.gov/appliances/2013rulemaking/documents/proposals/12-AAER-2F_Residential_Pool_Pumps_and_Replacement_Motors/California_IOUs_Response_to_the_Invitation_to_Submit_Proposals_for_Pool_and_Spas_2013-07-29_TN-71756.pdf.*

[51] The pump affinity laws describe the relationship of pump operating speed, flow rate, head, and hydraulic power. According to the affinity laws, speed is proportional to flow such that a relative change in speed will result in a commensurate change in flow. The affinity laws also establish that pump total head is proportional to speed squared and hydraulic power is proportional to speed cubed.

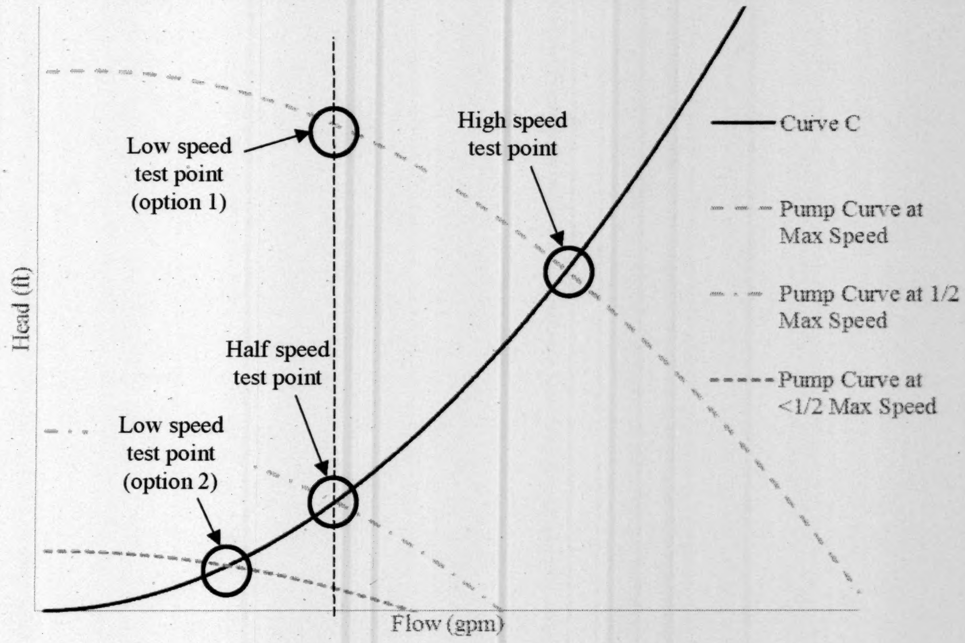

Figure III.4. Specified Load Points on Curve C at Maximum Speed for Two-Speed Self-Priming and Non-Self-Priming Pool Filter Pumps.

DOE notes that an alternative option for testing a two-speed pump would be to specify the low-speed load point as the point where that pump performance curve intersects curve C (option 2). This would result in a WEF that is higher (more efficient) than comparable two-speed pumps with low-speed settings that are higher (*e.g.,* one-half of maximum speed or higher).

Although two-speed pumps typically are equipped with alternating current (AC) induction motors that can operate with either 2- or 4-poles[52] activated, offering nominal synchronous operating speeds of 3,600 or 1,800 rpm, respectively, DOE notes that, due to motor slip, the motor may rotate at slightly less than half of the maximum speed of rotation. Alternatively, two-speed motors may be available with a low speed option that is less than half of the maximum speed, for example Waterway noted the potential for 2-/6-pole DPPP models that would be capable of operating at either 3,600 or 1,200 rpm, respectively. (EERE–2015–BT–STD–0008, Waterway, No. XX at pp. YYY) DOE does not believe that testing such a pump at only the high-speed setting would be representative of the performance of such pumps. Specifically, DOE understands, based on discussions with the DPPP Working Group, that most pumps would be sized and installed in a given pool application based on the low-speed flow rate, to provide adequate filtration at that speed and flow. The pump would be turned up to high speed periodically to provide the cleaning/mixing function. (EERE–2015–BT–STD–0008, CA IOUs, No. 58 at pp. 152—53; CA IOUs, No. 53 at p. 159—60; CA IOUs, No. 56 at p. 31; CA IOUs, No. 57 at pp.358—59) DOE believes this is the case for all two-speed pumps, regardless of their relative low- and high-speed settings and, therefore, believes that it is most representative to test all two-speed pumps at the low-speed setting on curve C. DOE also notes that, based on the proposed definition of a two-speed pump, a pump that operates at two speeds with a low speed that is greater than one-half of the maximum speed is not considered a two-speed dedicated-purpose pool pump. Dedicated-purpose pool pumps that have a second operating speed that is lower than the maximum speed but higher than one-half of the maximum speed would be tested as single-speed dedicated-purpose pool pumps.

To provide consistent and comparable ratings among two-speed pool filter pumps, DOE proposes to establish the following two test points for two-speed pool filter pumps: (1) A high flow point at the maximum speed at curve C and (2) a low flow point at the low-speed setting on curve C. DOE believes that these test points are representative of typical pool filter pump operation and energy performance. Specifically, DOE believes that the high flow and speed load point effectively characterizes the efficiency of the pump in a cleaning/mixing application, and low speed and low flow load point characterizes the efficiency of the pump in a typical filtration application. DOE also believes that the proposed load points for two-speed pool filter pumps are consistent with the intent of the DPPP Working Group. While DOE acknowledges that the DPPP Working Group specifically recommended a flow rate of one-half of the flow rate at the maximum speed of rotation on curve C, DOE believes the DPPP Working Group was considering only the most common two-speed pool filter pump design, with low-speed equal to one-half the maximum speed, when specifying the load points. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation # 6, at p. 5)

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[52] Poles are the number of sets of three-way electromagnetic windings contained within a motor. A 2-pole motor has one set of three-way windings, a 4-pole as two sets, and a 6-pole has three sets. The speed of the motor is a function of both the operating frequency and the number of poles in the motor.

DOE believes, based on the discussions of the DPPP Working Group, that the Working Group intended for two-speed pumps with low-speed settings other than one-half of the maximum speed of rotation to be operated at that low-speed setting and not throttled to achieve a specific flow value, as that is not likely to occur in the field.

However, by specifying that two-speed pool filter pumps would be tested at the low speed that is available on the pump, DOE recognizes that there is an opportunity for manufacturers to improve their WEF score by offering a low speed with a slower speed of rotation. While, in most cases, DOE believes that such differentiation is warranted, the DPPP Working Group acknowledged on several occasions that there is a minimum flow rate that is required for effective pool filtration and that flow rates below that minimum value are not useful and do not result in energy savings in the field. (EERE–2015–BT–STD–0008, Pentair, No. 53 at p. 136; CA IOUs, No. 53 at p. 136–137) Therefore, DOE believes that two-speed pool filter pumps with a low speed of rotation below a minimum threshold that is deemed reasonable for pool applications should not be able to be tested to determine the WEF rating of the pump, as such a rating would not be representative of the pump's performance in the field.

For multi-speed and variable-speed pool filter pumps, DOE proposes to establish discrete flow points, specified as a function of the pump's rated hydraulic horsepower at maximum speed on curve C, that are intended to represent the minimum flow rate for typical "small" and "large" pool applications (see section III.C.1.c for more discussion). Specifically, in section III.C.1.c DOE proposes a low flow rate of 24.7 gpm for multi-speed and variable-speed pool filter pumps that have a hydraulic output power less than or equal to 0.75 hp (small pool filter pumps) and a low flow rate of 31.1 gpm for multi-speed and variable-speed pool filter pumps that have a hydraulic output power greater than 0.75 (large pool filter pumps). DOE believes these flow rates would also be representative minimum flow rates for two-speed pool filter pumps and would effectively prevent the inclusion of unreasonably low speeds on two-speed pool filter pumps for the sole purpose of inflating WEF ratings.

DOE proposes that the low speed flow rate cannot be below 24.7 gpm for two-speed pool filter pumps that have a hydraulic output power less than or equal to 0.75 hp (small pool filter pumps) and that the low speed flow rate of cannot be below 31.1 gpm for two-speed pool filter pumps that have a hydraulic output power greater than 0.75 hp (large pool filter pumps). If a two-speed pump has a flow rate below the specified value at low speed, the low speed of that pump would not be tested. That is, the pump would only be tested at the high speed setting, similar to a single-speed pump, since the low speed setting results in a flow rate below the specified low flow rate on curve C. DOE is not aware of any such two-speed pumps that currently have a speed below the stated values. However, DOE believes the proposed test procedure is representative of the potential use of any such pumps, as any available low speeds that result in flow rates below the specified flow rates would not be useful and, therefore, would not be used in the field.

DOE requests comment on the proposed load points for two-speed pool filter pumps, as well as the minimum flow rate thresholds of 24.7 gpm for two-speed pool filter pumps that have a hydraulic output power less than or equal to 0.75 hp (small pool filter pumps) and a low flow rate of 31.1 gpm for two-speed pool filter pumps that have a hydraulic output power greater than 0.75 and less than 2.5 hp (large pool filter pumps).

In particular, DOE requests comment on the load points for two-speed pool filter pumps with a low-speed setting that is higher or lower than one-half of the maximum speed setting.

DOE also requests comment on the availability and any examples of two-speed pool filter pumps with a low-speed setting that are not exactly one-half of the maximum speed setting.

c. Variable-Speed and Multi-Speed Pool Filter Pumps

Although the DPPP Working Group suggested that DOE separately define variable-speed and multi-speed pool filter pumps, they recommended that the same test procedure be applied to both speed configurations. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation # 6, at p. 5) For variable- and multi-speed pool filter pumps, the DPPP Working Group also proposed two load points that are generally representative of a high-speed mixing/cleaning flow rate and a low-speed filtration flow rate, similar to two-speed pool filter pumps (as discussed in section III.C.1.b). However, the high-speed and low-speed load points for variable- and multi-speed equipment are specified in a slightly different manner than for two-speed equipment. Specifically, as shown in Table III.9, the DPPP Working Group recommended testing multi- and variable-speed pool filter pumps at (1) a high-speed load point that is achieved by running the pump at 80 percent of maximum speed (and flow rate) on curve C and (2) a low-speed load point that is representative of a specific, typical filtration flow rate, as opposed to a specific speed setting or relative reduction from maximum speed. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5)

TABLE III.9—VARIABLE- AND MULTI-SPEED LOAD POINTS RECOMMENDED BY DPPP WORKING GROUP

Load point	Flow rate (gpm)	Head (ft)	Speed (rpm)
High Speed	Q_{high}(gpm) = 0.8 × $Q_{max\_speed@c}$	$H \geq 0.0082 \times Q_{high}^2$	Lowest available speed for which the pump can achieve the specified flow rate (a pump may vary speed to achieve this load point).
Low Speed	Q_{low}(gpm) = • If pump hydraulic hp at max speed on curve C is >0.75, then Q_{low} = 31.1 gpm. • If pump hydraulic hp at max speed on curve C is ≤0.75, then Q_{low} = 24.7 gpm.	$H \geq 0.0082 \times Q_{low}^2$	

The DPPP Working Group recommended these flow rates because the range of operating speeds available in multi- and variable-speed pool filter pumps affects the typical sizing and operation of the pumps in the field. Specifically, the DPPP Working Group recommended a high flow rate of 80 percent of the flow at maximum speed on curve C to reflect the ability of variable-speed and some multi-speed pumps to be "right-sized" and provide a specific amount of flow that may be less than the flow rate at maximum speed on curve C. (EERE–2015–BT–STD–0008, No. 57 at pp. 388–405) The DPPP Working Group discussed how dedicated-purpose pool pumps are typically over-sized and, therefore, may not require the maximum amount of flow the pump can provide. (EERE–2015–BT–STD–0008, CA IOUs, No. 53 at pp. 142–143; Waterway, No. 54 at p. 51) Such oversizing often occurs as a result of the discrete horsepower sizes available, where a dedicated-purpose pool pump with pump horsepower slightly larger than that required may be installed when the calculated load is between two discrete nominal horsepower sizes. (EERE–2015–BT–STD–0008, Waterway, No. 57 at pp. 396–397) In addition, a larger variable speed pump than needed may also be installed in some installations to ensure the dedicated-purpose pool pump will be able to accommodate the pool volume, even if the pool filter becomes dirty.[53] For example, the Independent Pool & Spa Service Association (IPSSA) recommends, in their basic training manual, to oversize the pump by 25 percent.[54]

The DPPP Working Group also recommended that the high flow point be determined at the lowest speed available on the pump with a head point that is on or above curve C. (Docket No. Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5) DOE notes that, for some multi-speed pumps, the high flow point may be determined at the maximum operating speed of the pump and may not be on curve C, as the multi-speed pump does not have a lower operating speed available that can also provide 80 percent of the flow rate at maximum speed on curve C. For example, a three-speed dedicated-purpose pool pump that can operate with 2-, 4-, or 6-poles is capable of operating only at the discrete speeds of 3,600, 1,800, and 1,200 rpm, respectively. For such a pump, the lower operating speeds of 1,800 and 1,200 rpm would not be capable of providing a flow rate of 80 percent of the flow rate at maximum speed on curve C. Therefore, the aforementioned three-speed pump would need to be tested at the maximum operating speed and throttled to a head pressure higher than curve C to achieve a flow rate of 80 percent of the flow rate at maximum flow on curve C, as shown in Figure III.5.

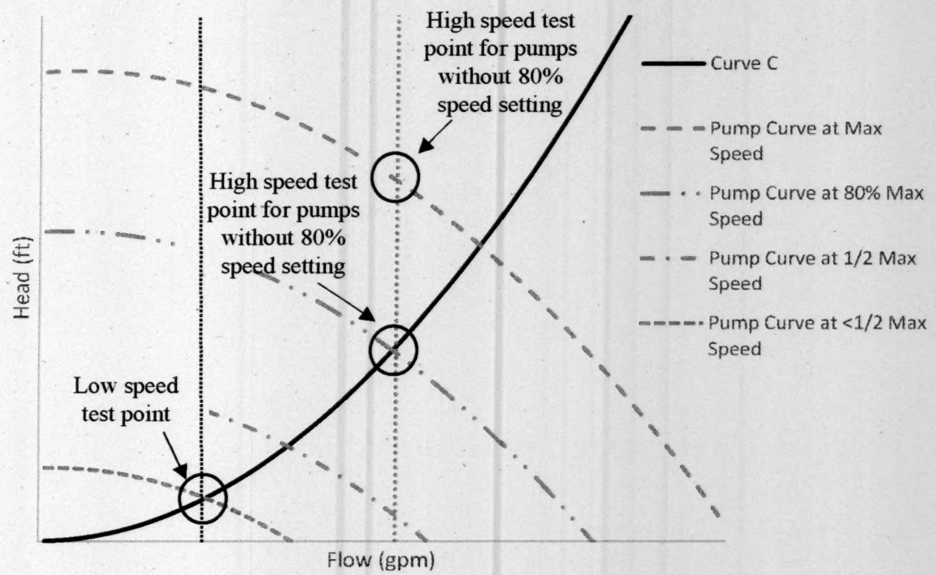

Figure III.5. Specified Load Points on Curve C at Maximum Speed for Multi-Speed and Variable-Speed Self-Priming and Non-Self-Priming Pool Filter Pumps.

DOE believes that such operation is representative of the energy use of multi-speed pumps, as they would not be able to achieve the 80 percent reduction in speed at the high flow point and, therefore, would not be able to be "right-sized" to provide a specific flow rate. Also, specifying the same flow rate for variable-speed and multi-speed pumps results in WEF ratings that are more directly comparable between the speed configurations.

As a result, DOE proposes to accept the DPPP Working Group recommendation that the high flow load point be determined at 80 percent of flow rate of the maximum speed of the pump on or above curve C. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5) That is, all multi-speed and variable-speed pumps will be first evaluated at maximum speed on curve C to determine the flow rate at that point. Then, the pump speed will be reduced and/or the pump total head will be increased to achieve a flow rate equivalent to 80 percent of the flow rate measured at the maximum operating speed on curve C for that pump. The flow and input power to the pump at this 80 percent load point would be used to represent the performance of the pump at high speed and flow in calculating the WEF.

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[53] As the pool filter accumulates debris, this increases the dynamic head within the pool system plumbing

[54] Independent Pool & Spa Service Association (IPSSA) Inc. 2008. *Basic Training Manual.* Prepared by Robert Lowry of Lowry Consulting Group, LLC, for the IPSSA.

DOE requests comment on the proposal to specify the high speed and flow point for multi-speed and variable-speed pool filter pumps based on a flow rate of 80 percent of the flow rate at maximum speed on curve C and head at or above curve C.

Specifically, DOE requests comment on the treatment of multi-speed pumps and the necessity to throttle multi-speed pumps on the maximum speed performance curve if appropriate lower discrete operating speeds are not available to achieve 80 percent of the flow rate at maximum speed on curve C while still maintaining head at or above curve C.

To develop the low flow rate for variable- and multi-speed pool filter pumps, the DPPP Working Group considered the unique application and operation of multi-speed and variable-speed dedicated-purpose pool pumps in the field. That is, the DPPP Working Group commented that, as multi-speed and variable-speed pumps are able to operate at speeds and flow rates significantly lower than their maximum operating speed, larger pumps may be installed in a given application than would otherwise be required, but the flexibility in operating speeds provides the ability to operate the pool filter pump at only the required minimum filtration flow rate for the given application. That is, a variable-speed pump with a rated hydraulic horsepower of 1.5 hp (approximately 3 nameplate horsepower[55]) may be installed to replace a two-speed pump with a rated hydraulic horsepower of 1 hp (approximately 1 nameplate horsepower), but would still be capable of providing the same (or lower) pool filtration flow rate than the pump it is replacing. (EERE–2015–BT–STD–0008, CA IOUs, No. 57 at p. 280) Therefore, instead of specifying the low flow point in terms of the maximum or available operating speeds of the pump, the DPPP Working Group recommended specifying the low flow points as specific, discrete flow rates that are representative of the typical flow rates observed in the field.

To develop a methodology to assign specific flow rates to specific sizes of multi-speed and variable-speed pool filter pumps, DOE and the DPPP Working Group reviewed the available data regarding the range of typical pool filter pump filtration flow rates and most common rated hydraulic horsepower sizes for pool filter pumps. Specifically, the DOE identified a bimodal distribution of rated hydraulic horsepower sizes for DPPP models in the population of self-priming pool filter pumps, with a higher frequency of DPPP models having rated hydraulic horsepowers of 0.5 and 0.75. (EERE–2015–BT–STD–0008, CA IOUs, No. 57 at pp. 308–315) To effectively differentiate multi- and variable-speed pool filter pumps appropriate for smaller pools from those appropriate for larger pools,[56] the DPPP Working Group recommended a threshold of 0.75 rated hydraulic horsepower. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5) That is, "small" multi-speed and variable-speed pool filter pumps with a rated hydraulic horsepower less than or equal to 0.75 would be associated with one specific flow rate typical of smaller pools and "large" multi-speed and variable-speed pool filter pumps with a rated hydraulic horsepower larger than 0.75 would be associated with one specific flow rate typical of larger pools.

To develop the specific flow rates for representative small and large pools, DOE developed flow rates that were representative of flow rates for the most common rated hydraulic horsepower sizes of dedicated-purpose pool pumps (*i.e.,* 0.5 and 0.75 rated hydraulic horsepower). To do this, DOE referenced the relationship between hydraulic horsepower and flow rate inherent in the method for calculating hydraulic horsepower shown in equation (2):

$$P_{\mathrm{Hydraulic}} = \frac{H \times Q \times SG}{3956} \qquad \textbf{(2)}$$

Where:

H = head in feet,

Q = flow in gallons per minute, and

SG = specific gravity of water, which can be assumed to be 1.00 based upon the definition of clean water used in HI 40.6.

Assuming that curve C is a representative system curve for pools, head can also be specified for these pumps according the equation describing curve C (*i.e.,* $H = 0.0082 \times Q^2$). Then, by rearranging equation (2) to specify flow in terms of head and hydraulic power, and by substituting the equation for curve C for head, a relationship can be developed that describes the filtration flow rate on curve C for a given pump in terms of the hydraulic horsepower provided at low speed, as shown in equation (3).

$$Q_{\mathrm{low}} = \left(\frac{3956}{0.0082} \times P_{\mathrm{Hydraulic,low}}\right)^{1/3} \qquad \textbf{(3)}$$

Where:

Q_{low} = the low filtration flow rate (gpm) and

$P_{\mathrm{Hydraulic,low}}$ = hydraulic horsepower of the pump at the low flow rate on curve C (hp).

DOE notes that this method is consistent with the typical sizing methods for pool filter pumps described in the industry (*i.e.,* IPSSA), where the necessary pump size required to accomplish the filtration function in pools is typically determined based on the necessary flow and head required on the pool system curve.[57] However, as pump size is typically described with respect to the maximum operating speed of the pump, rather than the low speed, the difference in speed between the low flow point and the maximum speed of the pump must be accounted for in order to accurately estimate the typical flow rates provided by the common pump hydraulic horsepower sizes found in DOE's DPPP database. DOE assumed a 50 percent speed reduction, which is representative of the difference between the high- and low-speeds for two-speed pumps and the least efficient assumption for multi-speed and variable-speed pumps. Accordingly, equation (3) can be updated to determine a representative relationship between the low flow rate and the rated hydraulic horsepower on curve C at maximum speed of any given pump, as shown in equation (4):

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[55] Nameplate horsepower refers to the nameplate, or rated, horsepower of the motor, see section III.E.1 for more details.

[56] DOE reiterates that the DPPP Working Group also recommended separate load points for pool filter pumps above 2.5 hydraulic horsepower (see section III.A.6) and refers to such pumps throughout this document as "very large pool filter pumps."

[57] Independent Pool & Spa Service Association (IPSSA) Inc. 2008. *Basic Training Manual.* Prepared by Robert Lowry of Lowry Consulting Group, LLC, for the IPSSA.

$$Q_{low} = \left(\frac{3956}{0.0082} \times 0.5 \times P_{Hydraulic,max}\right)^{1/3} = 39.21 \times \left(P_{Hydraulic,max}\right)^{1/3} \quad (4)$$

Where:

Q_{low} = the low filtration flow rate (gpm) and

$P_{Hydraulic}$ = hydraulic horsepower of the pump at maximum speed on curve C (*i.e.*, rated hydraulic horsepower, see section III.E.1) (hp).

Finally, similar to the logic applied when specifying the high flow point for multi-speed and variable-speed pool filter pumps, the DPPP Working Group considered that two-speed pool filter pumps, which the multi-speed and variable-speed pool filter pumps would replace, are typically oversized. That is, the required size to achieve a given flow rate would be calculated according to equation (4), but if the required horsepower landed between two horsepower bins, the pump would be up-sized to the next highest discrete nominal motor horsepower bin. In this case, DOE and the DPPP Working Group assumed a fixed amount of oversizing based on the difference in horsepower between the nominal motor horsepower bins, or 0.25 hydraulic horsepower. (Docket No. EERE–2015–BT–STD–0008, No. 56 at pp. 209–210) In doing so, DOE presumes that, even at low speed, the two-speed pump may be providing slightly more flow than is required to achieve the desired turnover rate in a given pool and, therefore, installing a variable-speed pump will allow for the exact amount of flow to be delivered and minimize excess flow and associated energy consumption. Using this method, DOE derived a representative flow rate for small pool filter pumps (with rated hydraulic horsepower at 0.5 hp) of 24.7 gpm and a representative flow rate for the large pool filter pumps (with rated hydraulic horsepower of 0.75 hp) of 31.1 gpm.

To relate these representative flow rates to the range of available multi-speed and variable-speed rated hydraulic horsepower sizes, the DPPP Working Group determined that it would be most representative to assign flow rates based on the comparable common DPPP size that any given multi-speed or variable-speed pool filter pump would be intended to replace. (Docket No. EERE–2015–BT–STD–0008, No. 57 at pp. 276–283). That is, small multi-speed and variable-speed pool filter pumps with rated hydraulic horsepower less than or equal to 0.75 are assumed to compete with and serve the same applications as a 0.5 rated hydraulic horsepower pump, which is associated with a "representative" curve C low, filtration flow rate of 24.7 gpm. Similarly, large multi-speed and variable-speed pool filter pumps are assumed to compete with pumps that are, at a minimum, 1 rated hydraulic horsepower and that typically operate at a low filtration flow rate of 31.1 gpm.

To verify the representativeness of the specified low flow points for multi-speed and variable-speed pool filter pumps, the DPPP Working Group reviewed typical pool sizes and turnover rates to determine a range of typical flow rates. The DPPP Working Group discussed that the majority of pools are between 15,000 and 25,000 gallons, and most pools of this size are operated with a turnover time of 12 hours. (Docket No. EERE–2015–BT–STD–0008, No. 59 at pp. 87–88) Specifically, ANSI/NSPI–5 2003, Residential Inground Swimming Pools, recommends a turnover time of 12 hours. This would result in a turnover rate of one to two turns per day, depending on if the pump is operating 24 hours per day or not. DOE notes that a turnover time greater than 12 hours is typically not feasible because the flow rate would be below the minimum required flow rate for proper operation of the pool filters, heater, and other ancillary equipment. That is, CA IOUs and Pentair noted that flow rates below 25 gpm are not representative of typical pool operation because they are below the minimum operating speed of some pool components. (Docket No. EERE–2015–BT–STD–0008, CA IOUs, No. 53 at pp. 136–137; Pentair, No. 53 at p. 136)

Assuming a 12-hour turnover time and the typical range of pool sizes noted above, typical filtration flow rates range from 21 to 35 gpm, as shown in Table III.10. This is consistent with CA IOUs observation that typical pool filtration flow rates should be around 25 to 30 gpm. (EERE–2015–BT–STD–0008, CA IOUs, No. 57 at p. 280) Therefore, the DPPP Working Group determined that the low flow points for multi-speed and variable-speed pool filter pumps of 24.7 and 31.1 gpm were reasonable and representative of most residential pool applications.

TABLE III.10—TYPICAL FLOW RATES BY POOL VOLUME FOR A 12-HOUR TURNOVER TIME *

Pool Volume (gallons)	15,000	20,000	25,000
Flow Rate *gpm*	21	28	35

* Data in the table were presented during the December 2015 Working Group meeting (EERE–2015–BT–STD–0008, No. 50 at p. 12) for average pool sizes based on sales data.

Based on this analysis, DOE agrees with the DPPP Working Group that flow rates of 24.7 gpm and 31.1 gpm are representative of flow rates that are typical for small and large pool filter pumps that are multi-speed and variable-speed, respectively. DOE also notes that such an approach would ensure that variable-speed pool filter pumps would always perform better than a two-speed pump in the same application, which DOE believes is reflective of the relative energy consumption of two- versus variable-speed pool filter pumps in the field. Therefore, consistent with the recommendations of the DPPP Working Group, DOE proposes to test multi-speed and variable-speed pool filter pumps that have a hydraulic output power less than or equal to 0.75 hp (small pool filter pumps) at a low flow rate of 24.7 gpm and multi-speed and variable-speed pool filter pumps that have a hydraulic output power greater than 0.75 and less than 2.5 hp (large pool filter pumps) at a low flow rate of 31.1 gpm, as summarized in Table III.9. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5)

DOE recognizes that this proposal, similar to the proposal for the high flow point for multi-speed and variable-speed pumps, does not explicitly specify the head or speed at which the pump operates at the low flow points. Instead, DOE proposes that the low and high flow rates would be achieved at the lowest available speed while operating on or above curve C to accommodate multi-speed pumps that may not be capable of operating at the exact speed that allows the pump to achieve the required flow rate exactly on curve C. For such a pump, DOE proposes that the pump be tested at the lowest available speed that can meet the specified flow with a head point that is at or above curve C for the low-flow (Q_{low}) test point, similar to the high-flow (Q_{high}) test point.

DOE requests comment on the proposed low flow points for small and large multi-speed and variable-speed pool filter pumps.

DOE also requests comment on the treatment of multi-speed pumps and proposal to test multi-speed pumps at the lowest available speed that can meet the specified flow with a head point that is at or above curve C for low-flow (Q_{low}) test point, similar to the high-flow (Q_{high}) test point.

d. Weighting Factor for Various Load Points

As WEF is calculated as the weighted average flow rate over the weighted average input power to the dedicated-purpose pool pump at various load points, as described in equation (1), DOE also must assign weights to the load points discussed above for each self-priming or non-self-priming pool filter pump. During the Working Group meetings, the DPPP Working Group discussed and ultimately recommended weights for the various speed configurations of pool filter pumps, as summarized in Table III.11. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #7 at p. 5)

TABLE III.11—SUMMARY OF LOAD POINT WEIGHTS (w_i) FOR SELF-PRIMING AND NON-SELF-PRIMING POOL FILTER PUMPS RECOMMENDED BY THE DPPP WORKING GROUP

DPPP Varieties	Speed type	Load point(s) i	
		Low flow	High flow
Self-Priming Pool Filter Pumps and Non-Self-Priming Pool Filter Pumps	Single		1.0
	Two/Multi/Variable*	0.80	0.20

* DOE notes that the DPPP Working Group recommendations explicitly recommended weights separately for "Multi-Speed" and "Variable-Speed" pool filter pump, but not for "Two-speed" pool filter pumps. DOE believes that this is an oversight in the documentation of the DPPP Working Group recommendation, as the DPPP Working Group intended all two-speed, multi-speed, and variable-speed pool filter pumps to have the same weights of 0.2 at the high flow point and 0.8 at the low flow point. (Docket No. EERE–2015–BT–STD–0008, No. 57 at pp. 426–429)

Specifically, for single-speed self-priming and non-self-priming pool filter pumps, because such pumps are tested at only one speed, the weight assigned to the single high flow point is 1.0. For two-speed, multi-speed, and variable-speed pool filter pumps, DOE analyzed all available data regarding representative operating profiles for pool filter pumps to determine representative weights for these pumps and presented such analysis to the DPPP Working Group.[58] Based on DOE's analysis and the collective industry experience of the DPPP Working Group members, the DPPP Working Group recommended weights of 0.20 at the high flow point and 0.80 at the low flow point. Although the DPPP Working Group acknowledged that the relative operation of any given pool filter pump would be variable based on the specific application, the DPPP Working Group believed that these weights would be most representative of the typical application and operation of dedicated-purpose pool pumps in the field. (Docket No. EERE–2015–BT–STD–0008, No. 57 at pp. 355–367)

In consideration of the DPPP Working Group recommendation, as well as DOE's own analysis, DOE proposes to use the weighting factors proposed by the DPPP Working Group and summarized in Table III.11 for self-priming and non-self-priming pool filter pumps.

DOE requests comment on the proposal to use a weight of 1.0 for single-speed pool filter pumps and weights of 0.20 for the high flow point and 0.80 for the low flow point for two-speed, multi-speed, and variable-speed pool filter pumps.

e. Applicability of Two-Speed, Multi-Speed, and Variable-Speed Pool Filter Pump Test Methods

As discussed in section III.A.7, DOE proposes specific definitions for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps that would dictate which of the pool filter pump test methods applies to a given pool filter pump, as described in sections III.C.1.a through III.C.1.c. The definitions for two-speed, multi-speed, and variable-speed dedicated-purpose pool pump establish specific criteria that any given dedicated-purpose pool pump must meet in order to be considered a two-speed, multi-speed, or variable-speed dedicated-purpose pool pump and be eligible to apply the test points for two-speed, multi-speed, and variable-speed pool filter pumps, respectively. If a dedicated-purpose pool pump does not meet the definition of two-speed, multi-speed, or variable-speed dedicated purpose pool pump discussed in section III.A.7, DOE proposes that such a pump would be tested using the single-speed pool filter pump test points, regardless of the number of operating speeds the pump may have.

However, the DPPP Working Group recommended additional provisions for two-speed self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower. That is, in order to use the two-speed pool filter pump test procedure, the DPPP Working Group recommended that self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower and are two-speed must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control with such capability but is unable to operate without the presence of such a pool pump control. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5B at p. 3). Effectively, this would require that only two-speed self-priming pool filter pumps (in the referenced size range) distributed in commerce with an automated, pre-programmable control or not distributed in commerce with such a control but unable to operate without one can apply the two-speed test points described in the self-priming pool filter pump test procedure. In such a case, two-speed self-priming pool filter pumps (in the referenced size range) that are distributed in commerce with only a manual switch would still meet the proposed definition of a two-speed dedicated-purpose pool pump, but would not be eligible to be tested with the two-speed pool filter pump test points. Instead, such a pump would be tested as a single-speed pool filter pump.

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[58] DOE's analysis of representative weights for different varieties and speed configurations of dedicated-purpose pool pumps is available in the docket for this rulemaking. (Docket No. EERE–2016–BT–TP–0002)

Consistent with the DPPP Working Group recommendations, DOE proposes to adopt the limitation on applicability of the two-speed test procedure to only those two-speed self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower and are distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has capability but is unable to operate without the presence of such a pool pump control.

DOE requests comment on the applicability of the two-speed, multi-speed, and variable-speed pool filter pump test methods to only those pool filter pumps that meet the proposed definitions of two-speed, multi-speed, and variable-speed dedicated-purpose pool pump.

DOE requests comment on additionally limiting the applicability of the two-speed test procedure to only those two-speed self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower and are distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has capability but is unable to operate without the presence of such a pool pump control.

DOE requests comment on any additional criteria or requirements that may be necessary to ensure that the test procedure for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps is representative of their likely energy performance in the field.

2. Waterfall Pumps

Another variety of dedicated-purpose pool pump covered by this proposed DPPP test procedure is waterfall pumps. Under the proposed definition in section III.A.4.a, waterfall pumps are pool filter pumps that have a maximum head less than or equal to 30 feet and a maximum speed less than or equal to 1,800 rpm. DOE also understands waterfall pumps operate typically at a single speed. (Docket No. EERE–2015–BT–STD–0008, Regal-Beloit America Inc, No. 53, at p. 118) Such pumps are specialty-purpose pool filter pumps that typically operate waterfalls or other water features in a pool. Because of these specific applications, the DPPP Working Group recommended unique test points for waterfall pumps that are representative of the typical applications of these pumps.

Specifically, the DPPP Working Group recommended testing waterfall pumps at a fixed head of 17 feet and at the maximum operating speed of the pump. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5) The Working Group recommended this test point because, in its view, it represents typical waterfall operating characteristics, which are generally a high flow, low static head application (The range of head values currently available for waterfall pumps is between 10 feet and 25 feet—an average of 17.5 feet of head). The working group agreed that all current waterfall pump models can achieve this test point, and this test point would not restrict future product designs. (Docket No. EERE–2015–BT–STD–0008, No. 56 at p. 230–237) Consistent with the single recommended load point, the DPPP Working Group also recommended fully weighting that load point (*i.e.,* assigning it a weight of 1.0). (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #7 at p. 5)

In this NOPR, DOE proposes to adopt the recommendations of the DPPP Working Group to test waterfall pumps at a single load point at maximum speed and a head of 17 feet and fully weight that single load point. However, DOE proposes to specify the load point more precisely, as 17.0 feet, to indicate the requisite amount of precision with which the test point must be achieved. DOE believes that this is a reasonable and achievable level of precision given the repeatability of the test and the allowable tolerances specified in sectionIII.D.2.d.

DOE requests comment on the proposed load point for waterfall pumps of 17.0 feet of head at the maximum speed of the pump and the proposed weight of 1.0 for the single load point.

3. Pressure Cleaner Booster Pumps

In addition to self-priming and non-self priming pool filter pumps and waterfall pumps, the DPPP Working Group also recommended specifying a test procedure for pressure cleaner booster pumps (PCBPs). Pressure cleaner booster pumps, as defined in section III.A.4.b, are dedicated-purpose pool pumps that are specifically designed to propel pressure-side pool cleaners along the bottom of the pool in pressure-side cleaner applications. These pressure-side cleaner applications require a high amount of head and a low flow. In the December 2015 DPPP Working Group recommendations, the Working Group had recommended a single, fixed load point of 90 feet of head at maximum speed based on the fact that any given pressure-side pool cleaner application is typically a single, fixed load point. (Docket No. EERE–2015–BT–STD–0008, Zodiac, No. 56 at p. 244) The DPPP Working Group developed the test point of 90 feet of head at maximum speed because it sufficiently represents typical pressure cleaner booster pump operation, while being achievable by all currently available models of pressure cleaner booster pumps.

However, at that time, the DPPP Working Group acknowledged that field conditions are extremely variable, and the operating conditions depend on the application of the pump. (Docket No. EERE–2015–BT–STD–0008, Pentair, No. 56 at pp. 244 & Hayward Industries, No. 56 at pp. 244–246) For example, Zodiac noted that the required pressure to operate a given pressure-side cleaner may vary from pool to pool based on differences in pool size and length, dimensions, and friction losses associated with the system piping. (Docket No. EERE–2015–BT–STD–0008, Zodiac, No. 56 at p. 244)

As a result, in the second round of negotiations, the DPPP Working Group reevaluated the recommended test procedure for pressure cleaner booster pumps and its ability to representatively evaluate and differentiate the potentially variable energy performance of different PCBP technologies. Specifically, pressure-side cleaners typically require a relatively fixed flow rate to ensure proper cleaning, and the Working Group discussed how pressure cleaner booster pumps are currently designed conservatively to be able to provide the requisite flow rate in even the worst-case, highest head-loss plumbing systems and pools. With conventional single-speed pressure cleaner booster pumps, orifice rings are typically installed to throttle the flow to the requisite flow rate at a higher head than may be necessary for the application. (Docket No. EERE–2015–BT–STD–0008, No. XX at p. YYY) However, the Working Group acknowledged that some plumbing systems may be able to effectively operate a pressure-side cleaner with significantly less head than typical, single-speed pressure cleaner booster pumps currently provide. For example, the CA IOUs presented data supporting the potential for variable-speed pressure cleaner booster pumps to reduce speed and provide the requisite flow rate and cleaner operating speed at lower head values. (Docket No. EERE–2015–BT–STD–0008, CA IOUs, No. 69) Therefore, to better capture the potential for variable performance of pressure cleaner booster pumps, including variable-speed pressure cleaner booster pumps, in the June 2016 DPPP Working Group recommendations, the Working Group revised the recommended test point for pressure cleaner booster pumps to be a flow rate of 10 gpm at the minimum speed that results in a head value at or above 60 feet.[59] (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #8 at pp. 4–5) In such a case, single-speed pressure cleaner booster pumps would still be evaluated at a head value and flow rate similar to the previously specified 90 feet. However, any variable-speed, multi-speed, or even two-speed pressure cleaner booster pumps may operate at a lower speed and lower head value, while still providing the requisite 10 gpm.

In either case, as only a single load point is required to adequately characterize the efficiency of pressure cleaner booster pumps, the DPPP Working Group recommended a weighting factor of 1.0 for measured performance at that single load point when calculating WEF. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 and #7 at p. 5)

DOE agrees with the June 2016 DPPP Working Group recommendations, and proposes to test pressure cleaner booster pumps at a single load point of 10 gpm at the minimum speed that results in a head value at or above 60 feet and to weight the measured performance of the pump at that load point with a weighting factor of 1.0. However, similar to waterfall pumps discussed in section III.C.1.e, DOE proposes to specify the load point more precisely, as a flow rate of 10.0 gpm and a head value at or above 60.0 feet, to indicate the requisite amount of precision with which the test point must be achieved. DOE believes that this level of precision is reasonable and achievable given the repeatability of the test and the allowable tolerances specified in section III.D.2.gIII.D.2.f.

DOE requests comment on the proposed load point for pressure cleaner booster pumps of 10.0 gpm at the minimum speed that results in a head value at or above 60.0 feet and the proposed weight of 1.0 for the single load point.

DOE requests comment and information regarding if this test point is achievable for all pressure cleaner booster pumps and, if not, how such pumps should be tested.

4. Summary

In summary, DOE proposes unique load points for the different varieties and speed configurations of dedicated-purpose pool pumps, as recommended by the DPPP Working Group. DOE's proposed load points (*i*) and weights (w_i) used in determining WEF for each pump variety are presented in Table III.12.

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[59] The actual verbiage in the June 2016 DPPP Working Group recommendations describes this load point in tabular format. The paragraph form presented here is identical in intent to the table presented in the June 2016 DPPP Working Group recommendations.

Table III.12. Proposed Load Points (i) and Weights (w_i) for Each DPPP Variety and Speed Configuration

DPPP Varieties	Speed Type	Test Points				Weight $\underline{w_i}$
		# of Points $\underline{n}$	Load Point $\underline{i}$	Flow Rate $\underline{Q}$	Head $\underline{H}$	
Self-Priming Pool Filter Pumps And Non-Self-Priming Pool Filter Pumps (with hydraulic hp ≤2.5 hp)	Single	1	High	Q_{high} (gpm) = $Q_{max\_speed@C}$ = flow at maximum speed on curve C	$H = 0.0082 \times Q_{high}^2$	1.0
	Two-Speed	2	Low	Q_{low} (gpm) = Flow rate associated with specified head and speed that is not below: • 31.1 gpm if pump hydraulic hp at max speed on curve C is >0.75 or • 24.7 gpm if pump hydraulic hp at max speed on curve C is ≤0.75 (a pump may vary speed to achieve this load point)	$H \geq 0.0082 \times Q_{low}^2$	0.8
			High	Q_{high} (gpm) = $Q_{max\_speed@C}$ = flow at max speed on curve C	$H = 0.0082 \times Q_{high}^2$	0.2
	Multi- and Variable-Speed	2	Low	Q_{low} (gpm)= • If pump hydraulic hp at max speed on curve C is >0.75, then Q_{low} = 31.1 gpm • If pump hydraulic hp at max speed on curve C is ≤0.75, then Q_{low} = 24.7 gpm (a pump may vary speed to achieve this load point)	$H \geq 0.0082 \times Q_{low}^2$	0.8
			High	Q_{high} (gpm) = 0.8 × $Q_{max\_speed@C}$ = 80% of flow at maximum speed on curve C (a pump may vary speed to achieve this load point)	$H = 0.0082 \times Q_{high}^2$	0.2
Waterfall Pumps	Single	1	High	Flow corresponding to specified head (on max speed pump curve)	17.0 ft	1.0
Pressure Cleaner Booster Pumps	All	1	High	10.0 gpm (a pump may vary speed to achieve this load point)	≥60.0 ft	1.0

D. Determination of Pump Performance

As part of DOE's test procedure for dedicated-purpose pool pumps, DOE is specifying how to measure the performance of the dedicated-purpose pool pump at the applicable load points (section III.C) consistently and unambiguously. Specifically, to determine WEF for applicable dedicated-purpose pool pumps, the proposed test procedure specifies methods to measure the driver input power to the motor or to the DPPP controls, if any, and the flow rate at each specified load point, as well as the hydraulic output power at maximum speed on system curve C (*i.e.*, the rated hydraulic horsepower, see section III.E.1). (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #5 at p. 4)

DOE notes that several industry standards currently exist that specify test methods applicable to dedicated-purpose pool pumps. DOE reviewed these industry test methods and provides a summary of this review in section III.D.1. Section III.D.1 also discusses the industry standard DOE proposes to incorporate by reference for measuring the performance of dedicated-purpose pool pumps.

However, DOE believes that several exceptions, modifications, and additions to this base test procedure are necessary to ensure accuracy and repeatability of test measurements (sections III.D.2.a through III.D.2.f). Finally, DOE proposes specific procedures for calculating the WEF from the collected test data and rounding the values to ensure that the test results are determined in a consistent manner (section III.D.2.g).

1. Incorporation by Reference of HI 40.6–2014

When determining the appropriate test method for measuring the relevant performance parameters for dedicated-purpose pool pumps (namely, driver input power, flow rate, speed of rotation, and hydraulic output power), DOE reviewed the DPPP test procedures that are established or referenced by the existing regulatory and voluntary programs that are discussed in section III.B.1. The rating metrics and testing requirements for each of these programs are summarized in Table III.13.

TABLE III.13—SUMMARY OF RATING METRICS AND INDUSTRY TEST PROCEDURES REFERENCED BY VARIOUS VOLUNTARY AND REGULATORY DPPP PROGRAMS

Rating program	Metric	Test procedure	Other relevant standards
CEC 2014 Appliance Efficiency Regulations.	Prescriptive design requirements.	IEEE Standard 114–2001 for determination of motor efficiency ANSI/HI 1.6–2000 with additional rating requirements and calculations (equivalent to ANSI/APSP/ICC–15a–2013) for pump performance.	N/A.
ENERGY STAR Program Requirements for Pool Pumps—Version 1.0.	EF	ANSI/HI 1.6–2000 with additional rating requirements and calculations (equivalent to ANSI/APSP/ICC–15a–2013).	ANSI/APSP–4–2007, ANSI/NSPI–5–2003, ANSI/NSPI–6–1999.
CEE High-Efficiency Swimming Pool Initiative.	EF and prescriptive design requirements for DPPP controls.	ANSI/APSP/ICC–15a–2013	N/A.
Australia and New Zealand Energy Rating Program.	EF	Part 1 of AS 5102–2009	N/A.

As shown in Table III.13, the CEC 2014 Appliance Efficiency Regulations[60] establish prescriptive design requirements for residential pool pumps, primarily focusing on the motor and controls with which the dedicated-purpose pool pump is sold. Cal. Code Regs., tit. 20 section 1605.3, subd. (g)(5). The CEC requires that reported motor efficiency is verifiable by IEEE Standard 114–2001, "IEEE Standard Test Procedure for Single-Phase Induction Motors."[61] The CEC also requires reporting of DPPP performance, as determined in accordance with the HI Standard 1.6 (ANSI/HI 1.6–2000), "American National Standard for Centrifugal Pump Tests" when certifying a dedicated-purpose pool pump under the Title 20 regulations. Cal. Code Regs., tit. 20 section 1606, subd. (a)(3). The test requirements for ENERGY STAR and CEE reference the ANSI/APSP/ICC–15a–2013, which is harmonized with the CEC testing methodology and also references HI 1.6–2000 for measurement of relevant pump performance parameters. *Id.* The test requirements for the Australia and New Zealand energy rating programs, defined in part 1 of AS 5102–2009, "Performance of household electrical appliances—Swimming pool pump—units: Energy consumption and energy performance," are similar to the CEC testing requirements, but includes a different test setup, different measurement requirements, and different load points. *Id.*

In the January 2016 general pumps TP NOPR, DOE incorporated by reference HI 40.6–2014 as the basis for the DOE test procedure for general pumps, with several exceptions, modifications, and additions.[62] 81 FR 4086, 4109–4117 (Jan. 25, 2016). As noted in the DPPP Working Group negotiations, HI 40.6–2014 was developed as a more rigorous, standardized test method, based on the acceptance test procedure provided in ANSI/HI 14.6–2011, "Methods for Rotodynamic Pump Efficiency Testing," which superseded HI 1.6–2000.[63]

In the May 2015 DPPP RFI, DOE discussed the various test methods and requested comment on any DPPP test procedure that DOE should consider in developing a potential test procedure for dedicated-purpose pool pumps. 80 FR 26475, 26483 (May 8, 2015). In response, HI stated that HI 40.6–2014 was developed and vetted by manufacturers, energy advocates, and others. HI also stated that HI 40.6–2014 is applicable to dedicated-purpose pool pumps. (Docket No. EERE–2015–BT–STD–0008, No. 8 at p. 4) HI did not believe that there are any other relevant test procedures that should be considered. In contrast, APSP responded that DOE should rely and reference ANSI/APSPICC–15–2013a. APSP elaborated on many aspects of ANSI/APSPICC–15–2013a, including that ANSI/APSPICC–15–2013a references ANSI/HI 1.6–2000, for testing pool pumps. (Docket No. EERE–2015–BT–STD–0008, No. 10 at p. 2) The only other comments DOE received on this topic from the May 2015 DPPP RFI were from entities that later joined the DPPP Working Group (see Table I.2). As previously stated in the NOPR, the May 2015 DPPP RFI comments from DPPP Working Group members are not addressed in this document because their concerns were discussed during the DPPP Working Group meetings and are reflected in the December 2015 DPPP Working Group recommendations.

In response to the comments from both APSP and HI, during the DPPP Working Group meetings, DOE reviewed ANSI/HI 1.6–2000, ANSI/HI 14.6–2011, and HI 40.6–2014. As mentioned by HI in the comment to the May 2015 DPPP RFI, HI 40.6–2014 was developed and vetted by manufacturers, energy advocates, and others—specifically building on ANSI/HI 14.6–2011. Based on this review, as discussed in the DPPP Working Group meetings, DOE determined that HI 40.6–2014 was similar to HI 1.6–2000 and HI 14.6–

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[60] California Energy Commission. *2014 Appliance Efficiency Regulations.* 2014. *www.energy.ca.gov/2014publications/CEC-400-2014-009/CEC-400-2014-009-CMF.pdf.*

[61] Available for purchase at: *http://standards.ieee.org/findstds/standard/114-2001.html.*

[62] The specific exceptions and modifications adopted in the January 2016 general pump TP final rule and their applicability to the DPPP test procedure proposed herein are discussed in section III.D.2).

[63] For more information see: *http://estore.pumps.org/Standards/Rotodynamic/EfficiencyTestsPDF.aspx.*

2011, but improves on the previous test methods by incorporating more clear, unambiguous, specific, and repeatable language that would improve the accuracy and consistency of the test results. (Docket No. EERE–2015–BT–STD–0008, No. 58 at pp. 370–430) Specifically, HI 40.6–2014 defines and explains how to calculate driver power input,[64] volume per unit time,[65] pump total head,[66] pump power output,[67] overall efficiency,[68] and other relevant quantities at the specified load points necessary to determine the proposed metric, WEF, and contains appropriate specifications regarding the test setup, methodology, standard rating conditions, equipment specifications, uncertainty calculations, and tolerances.

Based on this analysis, the DPPP Working Group recommended that the DPPP test procedure be based on wire-to-water testing in accordance with HI 40.6–2014. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #8 at p. 6) Consistent with the DPPP Working Group recommendations, DOE believes HI 40.6–2014 contains the relevant test methods needed to accurately characterize the performance of dedicated-purpose pool pumps, with a few exceptions, modifications, and additions noted in section III.D.2. Accordingly, DOE proposes to incorporate by reference certain sections of HI 40.6–2014 as part of DOE's test procedure for measuring the energy consumption of dedicated-purpose pool pumps, with the exceptions, modifications, and additions listed in III.D.2. DOE notes that HI 40.6–2014, with certain exceptions, is already incorporated by reference into subpart Y of 10 CFR part 431 and approved for § 431.464, and appendix A to subpart Y of part 431. 10 CFR 431.463. In this rule, DOE proposes to incorporate by reference HI 40.6–2014, with certain different exceptions, into the proposed appendix B to subpart Y that would contain the DPPP test procedure.

DOE requests comment on the proposal to incorporate by reference HI 40.6–2014 into the proposed appendix B to subpart Y, with the exceptions, modifications, and additions listed in section III.D.2.

2. Exceptions, Modifications and Additions to HI 40.6–2014

In general, DOE finds the test methods contained within HI 40.6–2014 are sufficiently specific and reasonably designed to produce test results necessary to determine the WEF of applicable dedicated-purpose pool pumps. However, only certain sections of HI 40.6–2014 are applicable to the proposed DPPP test procedure. In addition, DOE requires a few exceptions, modifications, and additions to ensure test results are as repeatable and reproducible as possible. DOE's proposed modifications and clarifications to HI 40.6–2014 are addressed in the subsequent sections III.D.2.a through III.D.2.g.

a. Applicability and Clarification of Certain Sections of HI 40.6–2014

Although DOE proposes to incorporate by reference HI 40.6–2014 as the basis for the DPPP test procedure, DOE notes that some sections of the standard are not applicable to the DPPP test procedure, while other sections require clarification regarding their applicability when conducting the DPPP test procedure. Table III.14 provides an overview of the sections of HI 40.62014 that DOE proposes to exclude from the DOE test procedure for dedicated-purpose pool pumps, as well as those that DOE proposes would only be optional and would not be required for determination of WEF.

TABLE III.14—SECTIONS OF HI 40.6–2014 DOE PROPOSES TO EXCLUDE FROM INCORPORATION BY REFERENCE

Section No.	Title	Proposed applicability
40.6.4.1	Vertically suspended pumps	Excluded.
40.6.4.2	Submersible pumps	Excluded.
40.6.5.3	Test report	Excluded.
40.6.5.5.1	Test procedure	Certain Portions Optional for Representations.
40.6.5.5.2	Speed of rotation during test	Excluded.
40.6.6.1	Translation of test results to rated speed of rotation	Excluded.
40.6.6.2	Pump efficiency	Optional for Representations.
40.6.6.3	Performance curve	Optional for Representations.
A.7	Testing at temperatures exceeding 30 °C (86 °F)	Excluded.
Appendix B	Reporting of test results	Excluded.

DOE proposes not incorporating by reference section 40.6.4.1, "Vertically suspended pumps," and section 40.6.4.2, "Submersible pumps," of HI 40.6–2014 in this DPPP TP NOPR because, as discussed in section III.A.1, dedicated-purpose pool pumps are end suction pumps and are not vertical turbine or submersible pumps. As such, the test provisions applicable to vertical turbine and submersible pumps described in section 40.6.4.1 and section 40.6.4.2 do not apply to the DPPP TP NOPR.

Additionally, section 40.6.5.5.2, "Speed of rotation during test," of HI 40.6–2014 requires that the speed of rotation to establish flow rate, pump total head, and power input be within the range of 80 percent and 120 percent of the rated speed. However, in this DPPP TP NOPR, rated or nominal speeds are not relevant, as DOE proposes testing at the maximum operating speed; low operating speed for two-speed pumps; and, for multi-speed and variable-speed pumps, any available speed that can meet the prescribed head and flow points (see section III.C.4). Similarly, section 40.6.6.1, "Translation of test results to rated speed of rotation," describes the method by which tested data can be translated to the rated speed of rotation for subsequent calculations and reporting purposes. As DOE proposes that all testing be conducted at the maximum speed of rotation, or at specific speeds that are determined by other characteristics (*i.e.*, the available discrete operating speeds of the pump and/or the specified flow rate and reference curve), translation of tested results based on speed is not necessary. As a result, DOE proposes to not incorporate section 40.6.5.5.2 and 40.6.6.1, and proposes different requirements regarding the operating speed at different test points, as summarized in Table III.12.

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[64] The term "driver power input" in HI 40.6–2014 is defined as "the power absorbed by the pump driver" and is synonymous with the term "driver input power" and "input power to the motor and/or controls," as used in this document.

[65] The term "volume per unit time" in HI–40.6 is defined as "the volume rate of flow in any given section" and is used synonymously with "flow" and "flow rate" in this document.

[66] The term "pump total head" is defined in HI 40.6–2014 as the difference between the outlet total head and the inlet total head and is used synonymously with the terms "total dynamic head" and "head" in this document.

[67] The term "pump power output" in HI–40.6 is defined as "the mechanical power transferred to the liquid as it passes through the pump, also known as pump hydraulic power." It is used synonymously with "hydraulic horsepower" in this document. However, where hydraulic horsepower is used to reference the size of a dedicated-purpose pool pump, it refers to the rated hydraulic horsepower, as defined in section III.E.1.

[68] The term "overall efficiency" is defined in HI 40.6–2014 as a ratio of pump power output to driver power input and describes the combined efficiency of a pump and driver.

HI 40.6–2014 also contains relevant requirements in section 40.6.5.5, "Test conditions," for the characteristics of the testing fluid to be used when testing pumps. Specifically, section 40.6.5.5 requires that the "tests shall be made with clear water at a maximum temperature of 10–30 °C (50–86 °F)" and clarifies that "clear water means water to be used for pump testing, with a maximum kinematic viscosity of 1.5×10^{-6} m^2/s (1.6×10-5 ft^2/s) and a maximum density of 1000 kgm3 (62.4 lb/ft^3)." DOE agrees with these requirements, as they will increase the repeatability and consistency of the test results, since significant variations in water density or viscosity can affect the tested pump performance. DOE proposes to include such requirements to test with clear water by incorporating by reference HI 40.6–2014, including section 4.6.5.5. However, in section A.7 of appendix A, "Testing at temperatures exceeding 30 °C (86 °F)," HI 40.6–2014 addresses testing at temperatures above 30 °C (86 °F). DOE does not intend to allow testing with liquids other than those meeting the definition of clear water presented previously, including water at elevated temperatures. Therefore, DOE proposes to exclude section A.7 from the incorporation by reference of HI 40.6–2014. DOE notes that, in the January 2016 general pumps TP final rule, DOE also did not incorporate section A.7 of appendix A of HI 40.6–2014. 81 FR 4086, 4110 (Jan. 25, 2016).

Finally, DOE notes that section 40.6.5.3, "Test report," provides requirements regarding the generation of a test report and appendix B, "Reporting of test results," provides guidance on test report formatting, both of which are not required for testing and rating dedicated-purpose pool pumps in accordance with DOE's procedure. In the January 2016 general pumps TP final rule, DOE also did not incorporate these sections for similar reasons. 81 FR 4086, 4110 (Jan. 25, 2016).

For the reasons stated previously, DOE proposes to not incorporate by reference section 40.6.4.1, 40.6.4.2, 40.6.5.3, 40.6.5.5.2, 40.6.6.1, section A.7 of appendix A, and appendix B of HI 40.6–2014 as part of the DOE test procedure for dedicated-purpose pool pumps.

DOE requests comment on its proposal to not incorporate by reference sections 40.6.4.1, 40.6.4.2, 40.6.5.3, 40.6.5.5.2, 40.6.6.1, A.7, and Appendix B of HI 40.6–2014 as part of the DOE test procedure for dedicated-purpose pool pumps.

In addition to the excluded sections of HI 40.6–2014 referenced previously, DOE also notes that certain sections of HI 40.6–2014 are not necessary to determine WEF for applicable dedicated-purpose pool pumps, but DOE opts to include them in the proposed DPPP test procedure for the purposes of any other optional representations DPPP manufacturers may wish to make regarding DPPP performance. Specifically, only the following measurements are required to calculate WEF for any given dedicated-purpose pool pump:

- Pump power output (hydraulic horsepower) at maximum speed of rotation on the reference curve (*i.e.*, rated hydraulic horsepower);
- driver power input (input power to the motor, or controls if available) at all load points *i*, specified uniquely for each DPPP variety and speed configuration (see section III.C);
- volume rate of flow (flow rate) at all load points *i*, specified uniquely for each DPPP variety and speed configuration (see section III.C);
- speed of rotation at each load point *i*, specified uniquely for each DPPP variety and speed configuration (see section III.C).

HI 40.6–2014 also contains methods that describe how to determine the BEP of the pump, pump efficiency, and overall efficiency. In addition, HI 40.6–2014 section 40.6.6.3, "Performance curve," describes how to specify head versus flow rate, power versus flow rate, and efficiency versus flow rate performance curves. Although determination of these pump performance metrics and curves is not required to calculate WEF, DOE acknowledges that DPPP manufacturers may wish to make representations regarding the performance of their dedicated-purpose pool pumps based on these metrics, in addition to the proposed WEF metric. Therefore, DOE proposes to incorporate by reference certain portions of HI 40.6–2014 (*i.e.*, sections 40.6.5.5.1, "Test procedure"; section 40.6.6.2, "Pump efficiency"; and section 40.6.6.3, "Performance curve) even though they are not directly applicable to the manner in which DOE proposes to test dedicated-purpose pool pumps to determine WEF. In the proposed regulatory text of the DPPP test procedure, DOE would refer specifically only to those sections that are applicable for the determination of WEF and note that determination of pump efficiency, overall efficiency, BEP, and pump performance curves is not required. With regard to section 40.6.5.5.1 of HI 40.6–2014, DOE notes that the specifications regarding warm-up time and collecting data at steady-state conditions are applicable to the determination of WEF. However, section 40.6.5.5.1, of HI 40.6–2014 also requires measurement of pump performance at test points corresponding to 40, 60, 75, 90, 100, 110, and 120 percent of the flow rate at the expected BEP of the pump. DOE proposes different load points for the varieties and speed configurations of dedicated-purpose pool pumps to which the test procedure is applicable, which are presented in detail in section III.C. Therefore, in the DPPP test procedure, DOE proposes to clarify that measurements at the load points described in section 40.6.5.5.1 are not required and that, instead, relevant parameters must be determined at the specific load points proposed in section III.C for each DPPP variety and speed configuration. However, manufacturers could elect to also record data at the test points described in section 40.6.5.5.1 in order to determine BEP or make representations regarding pump performance over the operating range of the equipment.

To allow manufacturers to make voluntary representations of other metrics, in addition to WEF, DOE proposes to clarify that section 40.6.5.5.1, section 40.6.6.2, and section 40.6.6.3, of HI 40.6–2014 are not required for determination of WEF, but may be optionally conducted to determine and make representations about other DPPP performance parameters.

DOE requests comment on the proposal to clarify the applicability of sections 40.6.5.5.1, section 40.6.6.2, and section 40.6.6.3, of HI 40.6–2014.

b. Calculation of Hydraulic Horsepower

In addition to the clarifications regarding the applicability of certain sections of HI 40.6–2014 to the DPPP test procedure, DOE believes that clarification is also required regarding the calculation of hydraulic horsepower. Specifically, in the January 2016 general pump TP final rule, DOE clarified that hydraulic horsepower must be calculated with a unit conversion factor of 3,956, instead of 3,960, which is specified in HI 40.6–2014. 81 FR 4086, 4109 (Jan. 25, 2016). DOE notes that the value of 3,956 more accurately represents the unit conversion from the product of flow (Q) in gpm, head (H) in feet, and specific gravity (which is dimensionless) to horsepower, when assuming a specific gravity of 1.0. In section 40.6.6.2, HI 40.6–2014 specifies a value of 3,960 in regards to calculating pump efficiency, but HI 40.6–2014 does not specify a specific unit conversion factor for the purposes of calculating pump hydraulic output power. Instead, HI 40.6–2014 provides the following equation (5) for determining pump power output:

$$P_u = \rho \times Q \times H \times g \quad (5)$$

Where:

P_u = the measured hydraulic output power of the tested pump,[69]

ρ = density,

Q = the volume rate of flow,

H = pump total head, and

g = acceleration due to gravity.

As shown in equation (5), the unit conversion factor can be derived from the product of density and acceleration due to gravity. An analysis was performed in support of the January 2016 general pumps TP final rule to convert from the metric units for density and acceleration due to gravity specified in HI 40.6–2014 to the appropriate units. This analysis found the value of 3,956 to be more accurate and have a greater amount of precision than the 3,960 value specified in HI 40.6–2014 for properties and conditions of the clear water used for testing. Therefore, to ensure consistent calculations and results in the DOE test procedure for dedicated-purpose pool pumps, and consistent with the January 2016 general pumps TP final rule, DOE proposes a unit conversion factor of 3,956 instead of the 3,960 value specified in HI 40.6–2014 and proposes to clarify that the 3,960 calculation in section 40.6.6.2 of HI 40.6–2014 should not be used. Also, DOE notes that the value of 3,956 is the value used by the DPPP Working Group and was shown in presentation material at the working group meetings. (Docket No., EERE–2015–BT–STD–0008, No. 42 at p. 17)

DOE requests comment on its proposal to clarify the calculation of pump hydraulic horsepower to reference a unit conversion of 3,956 instead of 3,960.

c. Data Collection and Determination of Stabilization

In order to ensure the repeatability of test data and results, the DPPP test procedure must provide instructions regarding how to sample and collect data at each load point. Such instructions ensure that the collected data are taken at stabilized conditions that accurately and precisely represent the performance of the dedicated-purpose pool pump at the designated load points, thus improving repeatability of the test.

Section 40.6.5.5.1 of HI 40.6–2014 provides that all measurements shall be made under steady state conditions. The requirements for determining when the pump is operating under steady state conditions in HI 40.6–2014 are described as follows: (1) There is no vortexing, (2) the margins are as specified in ANSI/HI 9.6.1, "Rotodynamic Pumps Guideline for NPSH Margin," and (3) the mean value of all measured quantities required for the test data point remains constant within the permissible amplitudes of fluctuations defined in Table 40.6.3.2.2 of HI 40.6–2014 over a minimum period of 10 seconds before performance data are collected. While HI 40.6–2014 does not specify the measurement interval for determination of steady state operation, DOE understands that a minimum of two stabilization measurements are required to calculate an average. To provide greater specificity regarding data collection in the context of determination of stabilization, in the January 2016 general pump TP final rule, DOE adopted requirements that at least two unique measurements must be used to determine stabilization. 81 FR 4086, 4011 (Jan. 25, 2016). DOE notes that the ENERGY STAR Program currently requires measurement equipment to record data at a rate "greater than or equal to one reading per second" and requires sampling data to be accumulated for at least one minute and the average (arithmetic mean) value to be recorded.[70] DOE believes the requirements for general pumps adopted in the January 2016 general pumps TP final rule accommodate a longer period between the sampling of individual data points and, therefore, any measurement procedures currently in place for ENERGY STAR testing would also meet the data collection and stabilization requirements adopted in the January 2016 general pumps TP final rule. 81 FR 4086, 4011 (Jan. 25, 2016). As a result, DOE believes the data collection requirements specified in the January 2016 general pumps TP final rule are sufficient to collect accurate and repeatable measurements, but also accommodate more frequent data collection if test labs are able to accommodate such. Therefore, DOE proposes to adopt requirements that at least two unique measurements must be used to determine stabilization when testing pumps according to the DPPP test procedure.

Section 40.6.3.2.2 of HI 40.6–2014, "Permissible fluctuations," also provides that permissible damping devices may be used to minimize noise and large fluctuations in the data in order to achieve the specifications noted in Table 40.6.3.2.2. To ensure that each stabilization data point is reflective of a separate measurement, in the January 2016 general pumps TP final rule, DOE adopted requirements that damping devices are only permitted to integrate up to the measurement interval. 81 FR 4086, 4011 (Jan. 25, 2016). Similarly, in this DPPP TP NOPR, DOE proposes to specify that damping devices are only permitted to integrate up to the measurement interval to ensure that each stabilization data point is reflective of a separate measurement. DOE also proposes that, for physical dampening devices, the pressure indicator/signal must register 99 percent of a sudden change in pressure over the measurement interval to satisfy the requirement for unique measurements, consistent with annex D of ISO 3966:2008(E), "Measurement of fluid flow in closed conduits—Velocity area method using Pitot static tubes," which is referenced in HI 40.6–2014 for measuring flow with pitot tubes.

DOE requests comment on the proposal to specify that at least two unique data points must be used to determine stabilization and to allow damping devices, as described in section 40.6.3.2.2, but with integration limited to less than or equal to the data collection interval.

d. Test Tolerances

As discussed in section III.D.2.a and III.C, DOE proposes to specify unique load points for each DPPP variety and speed configuration. DOE notes that HI 40.6–2014 does not provide explicit tolerances around each specified load point. That is, HI 40.6–2014 does not specify how close a measured data point must be to the specified load point or if that data point must be corrected in any way for deviations from the specified value. For example, the DPPP test procedure proposes to require testing at a low flow point of 24.7 gpm at or above curve C for multi-speed and variable-speed pool filter pumps. Due to experimental variability and test uncertainty, it is possible that the recorded data point may be slightly above or below 24.7 gpm. To ensure repeatability and consistency of test results, the DOE DPPP test procedure must specify how close each measured data point must be to the specified load point and if any correction should occur.

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[69] For each of the quantities listed, HI 40.6–2014 provides multiple metric and U.S. customary units. Appendix E also provides unit conversions.

[70] *ENERGY STAR Program Requirements Product Specification for Pool Pumps, Final Test Method.* Rev. Jan-2013, section 6.2.A.3, p 4. *https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf.*

To develop the proposal regarding tolerances on the measured flow and head parameters for each load point, DOE referred to the requirements of other existing DPPP test procedures and programs, such as ENERGY STAR and NSF/ANSI 50–2015. Specifically, DOE identified that the ENERGY STAR program maintains a tolerance on the flow rate used to test pool pumps of ±2.5 percent but does not require a tolerance of the head measured at each load point for the respective system curve under consideration.[71] Additionally, NSF 50–2015, in section C.1.5 of Annex C of NSF 50–2015 requires that each tested pump at each measured load point must have:

- A tested total dynamic head that is between −3 percent and +5 percent of the total dynamic head specified by the manufacturer's performance curve and
- a tested flow rate that is ±5 percent of the flow specified by the manufacturers performance curve.[72]

The pump performance curves used by manufacturers to describe the operation of DPPP equipment are often compilations of multiple data sets and are intended to represent the average operation of that specific model of pump. DOE understands that the NSF/ANSI 50–2015 limits are intended to capture both manufacturing variability, as well as experimental variability, and thus represent a worst case tolerance on flow and head that should be attainable by any given unit within a given DPPP model.

Conversely, DOE's tolerances on flow and head at each load point are meant to represent how closely any given pump being tested can achieve a specified load point, which is subject to experimental uncertainty but not manufacturing variability among specific units. Similarly, the ENERGY STAR tolerances apply to a specific tested pump and account for experimental variability only. As a result, DOE believes it is more appropriate to reference tolerances similar to those referenced in ENERGY STAR for the load points specified in the DPPP test procedure, or ±2.5 percent of the specified load point.

However, DOE notes that the load points are specified, primarily, in terms of flow and speed for self-priming pool filter pumps, non-self-priming pool filter pumps, and pressure cleaner booster pumps (head is the dependent variable), while waterfall pumps have a load point that is primarily specified in terms of head and speed (flow is the dependent variable). That is, for self-priming pool filter pumps, non-self-priming pool filter pumps, and pressure cleaner booster pumps, the achievable value of pump total head or head point at each flow rate is dependent on the specific operating speed and speed configuration of each dedicated-purpose pool pump. For example, the high flow point for multi-speed and variable-speed pool filter pumps is specified as 80 percent of the flow rate at the maximum speed at or above the reference curve (*i.e.,* curve C for pool filter pump with hydraulic horsepower less than 2.5 hp). Different DPPP models will have different tested head points depending on if the pump can continuously reduce speed to achieve exactly the flow and head points on the reference curve, or if the dedicated-purpose pool pump only has a few discrete speeds and must be tested at 80 percent of the flow rate load point at maximum speed in order to achieve a load point that is both at 80 percent of the flow at maximum speed on the reference curve and at or above the reference curve head points. In such a case, the head value would be above the reference curve.

As a result, DOE proposes to specify, for self-priming and non-self-priming pool filter pumps, that the tested flow rate must be within ±2.5 percent of the specified flow rate, which is the flow rate on the reference curve at the specified speed or 24.7 or 31.1 gpm for multi-speed and variable-speed pool filter pumps. For self-priming and non-self-priming pool filter pumps, a range of head points would be acceptable, based on the performance of any given DPPP model. Similarly, for pressure cleaner booster pumps, DOE proposes a test point corresponding to a flow rate of 10.0 gpm at a head at or above 60.0 feet. As the flow rate is fixed, but the head value may vary, DOE also proposes that the tested flow rate must be within ±2.5 percent of the specified flow rate for pressure cleaner booster pumps. For waterfall pumps, DOE proposes to specify that the tested head point must be within ±2.5 percent of the specified head value (*i.e.,* 17.0 ± 0.425 feet) at maximum speed, while the flow rate may vary based on the performance of the particular DPPP unit under test. DOE also does not propose a tolerance on the tested speed, as the tested maximum speeds are specific to each dedicated-purpose pool pump being tested.

DOE requests comment on its proposal to require that the tested flow rate at each load point must be within ±2.5 percent of the flow rate at the specified load point self-priming pool filter pumps, non-self-priming pool filter pumps, and pressure cleaner booster pumps.

DOE requests comment on its proposal to require that the tested head point at each load point must be within ±2.5 percent of the head point at the specified load point for waterfall pumps.

e. Power Supply Characteristics

Because input power to the dedicated-purpose pool pump, measured at the motor or control, as applicable, is a component of the proposed metric, the measurement of input power to the driver is an important element of the test. As discussed at length in the January 2016 general pumps TP final rule, the characteristics of the power supplied to the dedicated-purpose pool pump affect the accuracy and repeatability of the measured power draw to the motor or control of the DPPP model being tested. 81 FR 4086, 4112–4115 (Jan. 25, 2016). Consistent with the requirements in the January 2016 general pumps TP final rule, to ensure accurate and repeatable measurements of DPPP input power to the motor or control, DOE proposes to specify nominal values for voltage, frequency, voltage unbalance, and total harmonic distortion; as well as tolerances for each of these quantities that must be maintained at the input terminals to the motor and/or control as applicable.

To determine the appropriate power supply characteristics for testing dedicated-purpose pool pumps, DOE examined applicable test methods for similar equipment (*i.e.,* equipment typically driven by electric motors and sometimes accompanied with variable frequency drives). In the January 2016 general pumps TP final rule, DOE provided a summary of tolerances referenced in other relevant industry standards[73] and performed a detailed analysis surrounding the impact of differences in each power supply characteristic (*i.e.*, voltage unbalance, voltage tolerance, frequency tolerance, voltage waveform distortion, and source impendence) on the test measurements and resultant metric. DOE found that large differences in voltage unbalance, voltage tolerance, frequency tolerance, or voltage waveform distortion can impact the performance of the motor or control (especially variable frequency drive) with which the pump may be sold. To ensure that such power supply characteristics were reasonable, DOE also analyzed the typical power characteristics available on the U.S. power grid and the feasibility of achieving the specified requirements with or without power conditioning equipment. *Id.*

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[71] *ENERGY STAR Program Requirements Product Specification for Pool Pumps, Final Test Method.* Rev. Jan-2013, section 6.2.A.2, p 4. *https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf.*

[72] NSF/ANSI 50–2015 Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities, 2015 NSF International, Ann Arbor Michigan.

Based on this analysis, DOE adopted the power supply requirements summarized in Table III.15 when testing of the input power to the motor or control,[74] which DOE is also proposing to adopt for the DPPP test procedure. 81 FR 4086, 4152 (Jan. 25, 2016).

TABLE III.15—PROPOSED POWER SUPPLY REQUIREMENTS FOR DEDICATED-PURPOSE POOL PUMPS

Characteristic	Tolerance
Voltage	±5% of the rated value of the motor.
Frequency	±1% of the rated value of the motor.
Voltage Unbalance.	±3% of the rated value of the motor.
Total harmonic Distortion.	≤12% throughout the test.

DOE believes that, because dedicated-purpose pool pumps utilize electrical equipment (*i.e.*, motors and drives) similar to that used by general pumps, such requirements also apply when testing dedicated-purpose pool pumps. DOE notes that, under the proposed DPPP test procedure and in accordance with the DPPP Working Group specifications, all dedicated-purpose pool pumps would require measurement of input power to the pump at the motor or controls, as applicable (see section III.D.1). (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #8 at p. 6) Therefore, in this DPPP test procedure, DOE proposes that when testing dedicated-purpose pool pumps the following conditions would apply to the main power supplied to the motor or controls, if any:

- Voltage maintained within ±5 percent of the rated value of the motor.
- Frequency maintained within ±1 percent of the rated value of the motor.
- Voltage unbalance of the power supply maintained within ±3 percent of the rated value of the motor.
- Total harmonic distortion maintained at or below 12 percent throughout the test.

DOE requests comments on the proposed voltage, frequency, voltage unbalance, and total harmonic distortion requirements that would have to be satisfied when performing the DPPP test procedure for dedicated-purpose pool pumps.

Specifically, DOE requests comments on whether these tolerances can be achieved in existing DPPP test laboratories, or whether specialized power supplies or power conditioning equipment would be required.

f. Measurement Equipment for Testing

In the January 2016 general pumps TP final rule, DOE incorporated appendix C of HI 40.6–2014, which specifies the required instrumentation to measure head, speed, flow rate, torque, temperature, and electrical input power to the motor. However, DOE noted, in that rule, that, for the purposes of measuring input power to the driver for pumps sold with a motor and continuous or non-continuous controls rated using the testing-based method, the equipment specified in section C.4.3.1, "electric power input to the motor," of HI 40.6–2014 may not be sufficient. Instead, consistent with other relevant industry standards[75] for measurement of input power to motor and drive systems, DOE adopted requirements that electrical measurements for determining pump power input be taken using equipment capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency[76] and have an accuracy level of ±2.0 percent of full scale when measured at the fundamental supply source frequency when rating pumps using the testing-based methods or with a calibrated motor. 81 FR 4086, 4118–19 (Jan. 25, 2016).

DOE proposes to refer to appendix C of HI 40.6–2014, as incorporated by reference (see section III.D.1), to specify the required instrumentation to measure head, speed, flow rate, and temperature in the DPPP test procedure. In addition, as all dedicated-purpose pool pumps would require measurement of the input power to the motor or control, as applicable, DOE proposes to specify that, for the purposes of measuring input power to the motor or control, as applicable, of DPPP models, electrical measurement equipment must be used that is capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency[77] and having an accuracy level of ±2.0 percent of full scale when measured at the fundamental supply source frequency.

DOE requests comment on its proposal to require measurement of the input power to the dedicated-purpose pool pump using electrical measurement equipment capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency and having an accuracy level of ±2.0 percent of full scale when measured at the fundamental supply source frequency.

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[73] In the January 2016 general pumps TP final rule, DOE determined that the IEEE Standard 112–2004, "IEEE Standard Test Procedure for Polyphase Induction Motors and Generators" (IEEE 112–2004) and the Canadian Standards Association (CSA) C390–10, "Test methods, marking requirements, and energy efficiency levels for three-phase induction motors" (CSA C390–10) are the most relevant test methods for measuring input power to electric motors, as they are the test methods incorporated by reference as the DOE test procedure for electric motors. Other widely referenced industry standard test methods for motors include: IEC 60034–1 Edition 12.0 2010–02, "Rotating electrical machines—Part 1: Rating and performance" (IEC 60034–1:2010) and NEMA MG 1–2014, "Motors and Generators" (NEMA MG 1–2014). DOE also identified both AHRI 1210–2011, "2011 Standard for Performance Rating of Variable Frequency Drives," (AHRI 1210–2011) and the 2013 version of CSA Standard C838, "Energy efficiency test methods for three-phase variable frequency drive systems," (CSA C838–13) as applicable methods for measuring the performance of VSD control systems. 81 FR 4086, 4112–15 (Jan. 25, 2016).

[74] Under the pump test procedure adopted in the January 2016 general pumps TP final rule, pumps sold with motors rated using the testing-based method, pumps sold with motors and continuous or non-continuous controls rated using the testing-based method, and any pumps rated using the calculation-based method when the bare pump are evaluated using a calibrated motor to determine pump shaft input power. 81 FR 4086, 4115 (Jan. 25, 2016).

[75] Specifically, DOE identified AHRI 1210–2011, "2011 Standard for Performance Rating of Variable Frequency Drives"; the 2013 version of CSA Standard C838, "Energy efficiency test methods for three-phase variable frequency drive systems"; Canadian Standards Association (CSA) C390–10, "Test methods, marking requirements, and energy efficiency levels for three-phase induction motors"; and IEC 61000–4–7, "Testing and measurement techniques—General guide on harmonics and interharmonics measurements and instrumentation, for power supply systems and equipment connected thereto" as relevant to the measurement of input power to the motor or control.

[76] CSA C838–13 requires measurement up to the 50th harmonic. However, DOE believes that measurement up to the 40th harmonic is sufficient, and the difference between the two types of frequency measurement equipment will not be appreciable.

[77] CSA C838–13 requires measurement up to the 50th harmonic. However, DOE believes that measurement up to the 40th harmonic is sufficient, and the difference between the two types of frequency measurement equipment will not be appreciable.

DOE also notes that HI 40.6–2014 does not contain any requirements or description of the instruments required for measuring distance. However, measurements of distance, for example height above the reference plane, are required when conducting the proposed test procedure, for example when determining the self-priming capability of self-priming and non-self-priming pool filter pumps (see section III.I.3). As such, DOE proposes to require instruments for measuring distance that are accurate to and have a resolution of at least ±0.1 inch. DOE believes this will improve the consistency and repeatability of test results and ensure all results are, in fact, indicative of the measured performance. DOE notes that, while this accuracy requirement is generally applicable, it is a maximum tolerance. To the extent that measurement of height or distance is necessary for determining measured head values, the accuracy of any distance-measuring instruments is included in the overall accuracy requirement for "differential head," "suction head," and/or "discharge head" presented in table 40.6.3.2.3 of HI 40.6–2014, "Maximum permissible measurement device uncertainty." This is consistent with the treatment of all other variables, where when more than one instrument is used to measure a given parameter, the combined accuracy, calculated as the root sum of squares of individual instrument accuracies, must meet the specified accuracy requirements. Therefore, when used in combination with other instruments to measure head, distance-measuring instruments may need to meet higher or lower accuracy requirements to conform to the specified accuracies for measurement of differential, suction, and discharge head.

DOE requests comment on the proposal to require instruments for measuring distance that are accurate to and have a resolution of at least ±0.1 inch.

g. Calculation and Rounding Modifications and Additions

DOE notes HI 40.6–2014 does not specify how to round values for calculation and reporting purposes. DOE recognizes that the manner in which values are rounded can affect the resulting WEF, and all WEF values should be reported with the same number of significant digits. Therefore, to improve the accuracy and consistency of calculations, DOE proposes that raw measured data be used to calculate WEF and the resultant value be rounded to the nearest 0.1.

DOE requests comment on the proposal to use raw measured data to calculate WEF as well as the proposal to round WEF to the nearest 0.1 kgal/kWh.

E. Additional Test Methods

In addition to the measurements and calculations necessary to determine WEF, DOE also must establish consistent terminology and measurement methods to categorize the "size" of a given dedicated-purpose pool pump, as well as establish whether a given dedicated-purpose pool pump is self-priming. Specifically, as discussed in section III.C, DOE proposes to establish different load points and reference curves based on the rated hydraulic horsepower of a given pool filter pump. DOE's proposal for a standardized and consistent method to determine DPPP size is discussed in section III.E.1. As discussed in section III.A.3.b, DOE also proposes to differentiate pool filter pumps based on whether they are self-priming. DOE's test method for determining the self-priming capability of dedicated-purpose pool pumps is discussed in section III.E.2.

1. Determination of DPPP Size

Industry currently uses several terms to characterize the size of dedicated-purpose pool pumps, including total horsepower, DPPP motor capacity, nameplate horsepower, rated horsepower, max-rated horsepower, up-rated horsepower, brake horsepower, service factor horsepower, peak power, and hydraulic horsepower. The terms, as they are defined in the industry standard ANSI/APSP/ICC–15a–2013, their definitions, and any synonyms contained in other relevant industry standards are summarized in Table III.16.

TABLE III.16—SUMMARY OF TERMS IN TYPICAL DPPP INDUSTRY STANDARDS USED TO DESCRIBE PUMP "SIZE"

Defined term	Definition	Synonyms
Brake horsepower	A term historically used in the pool, spa, and whirlpool bath industries. A term that conflicts with total horsepower and service factor horsepower[a].	HI 40.6–2014 defines this term as pump power input.[b] Also known as pump shaft horsepower.
Capacity of the motor	The total horsepower or product of the rated horsepower and the service factor of a motor used on a dedicated-purpose pool pump (also known as service factor horsepower) based on the maximum continuous duty motor power output rating allowable for the nameplate ambient rating and motor insulation class. Total horsepower = rated horsepower × service factor[a].	Total horsepower, DPPP motor capacity, service factor horsepower. HI 40.6–2014 defines this term as driver power input.[b]
Full-rated	A term used to describe DPPP motors with a service factor greater than 1.25 typically. The term is generally used for marketing purposes[a].	N/A.
Max-rated	A term used to describe DPPP motors with a service factor of between 1.0 and 1.25 typically. The term is generally used for marketing purposes[a].	Up-rated.
Nameplate horsepower	The motor horsepower listed on the pump and the horsepower by which a pump is typically sold.[a] The horsepower displayed on the nameplate mounted on the motor[c].	Rated horsepower.
Peak horsepower	A term historically used in the pool, spa, and whirlpool bath industries. A term that conflicts with total horsepower and service factor horsepower[a].	N/A.
DPPP motor capacity	See Total horsepower.[a] A value equal to the product of motor's nameplate HP and service factor[c].	Total horsepower, capacity of the motor, service factor horsepower. HI 40.6–2014 defines this term as driver power input.[b]

TABLE III.16—SUMMARY OF TERMS IN TYPICAL DPPP INDUSTRY STANDARDS USED TO DESCRIBE PUMP "SIZE"—Continued

Defined term	Definition	Synonyms
Rated horsepower	The motor power output designed by the manufacturer for a rated rpm, voltage, and frequency. May be less than total horsepower where service factor is >1.0, or equal to total horsepower where the service factor is = 1.0.[a,d] Also known as nameplate horsepower[d].	Nameplate horsepower.
Service factor[e]	A multiplier applied to the rated horsepower of a pump motor to indicate the percent above nameplate horsepower at which the motor can operate continuously without exceeding its allowable insulation class temperature limit, provided that other design parameters, such as rated voltage, frequency, and ambient temperature, are within limits[a, c, d, f].	N/A.
Service factor horsepower	The maximum continuous duty motor power output rating allowable for nameplate ambient rating and motor insulation class. Service factor horsepower (also known as total horsepower) = rated horsepower × service factor.[a]	Total horsepower, DPPP motor capacity, capacity of the motor. HI 40.6–2014 defines this term as driver power input.[b]
Special horsepower	A term historically used in the pool, spa, and whirlpool bath industries, which may conflict with rated horsepower and service factor horsepower.[a]	N/A.
Total horsepower[d,g]	The product of the rated horsepower and the service factor of a motor used on a dedicated-purpose pool pump (also known as service factor horsepower) based on the maximum continuous duty motor power output rating allowable for nameplate ambient rating and motor insulation class. Total horsepower = rated horsepower × service factor.[a,c,d]	HI 40.6–2014 defines this term as driver power input.[b]
Up-rated	A term typically used to describe DPPP motors with a service factor of between 1.0 and 1.25. The term is generally used for marketing purposes.[a]	Max-rated.
Hydraulic horsepower	The mechanical power transferred to the liquid as it passes through the pump. Also known as pump hydraulic power.[b]	HI 40.6–2014 defines this term as pump power output.[b]

[a] ANSI/APSP/ICC–15a–2013, section 3, "Definitions."
[b] HI 40.6–2014, Table 40.6.2.1, "List of quantities, terms, and definitions."
[c] Cal. Code Regs., tit. 20 section 1602, subd. (g).
[d] ENERGY STAR Program Requirements for Pool Pumps-Eligibility Criteria (Version 1.1), section 1.4, "Product Ratings."
[e] Service factor is not an explicit description of pump "size" but is used is defining related terms (*e.g.,* service factor horsepower and total horsepower).
[f] CA Title 20 defines this term as "service factor (of an AC motor) means a multiplier which, when applied to the rated horsepower, indicated a permissible horsepower loading which can be carried under the conditions specified for the horsepower."
[g] Defined as "total horsepower (of an AC motor)" in CA Title 20.

DOE recognizes that the DPPP industry terminology related to pump size is confusing, as there are several commonly referenced and similar terms. The DPPP Working Group discussed these terms, and ultimately recommended standardizing the terminology referring to pump size around the hydraulic horsepower provided by the pump at a specific load point. (Docket No., EERE–2015–BT–STD–0008, No. 56 at pp. 148–173) Using hydraulic horsepower to standardize the description of "pump horsepower" has several benefits as compared to other horsepower terms. First, it is a quantity that is directly measurable. In addition, the variables necessary to determine hydraulic horsepower are already measured in the industry standard DOE proposes to incorporate by reference as the basis for the DPPP test procedure (see section III.D.1). Further, the hydraulic horsepower provides consistent and comparable criteria to compare pumps that provide the same output flow rate and total dynamic head (*i.e.,* serving the same load).

Horsepower ratings describing the input power to the motor are variable, based on the efficiency of the pump and motor for pumps serving the same load. As a result, in this DPPP TP NOPR, DOE proposes to consistently refer to and categorize dedicated-purpose pool pumps based on the hydraulic horsepower they can produce at a particular load point, as measured in accordance with the proposed DPPP test procedure. Hydraulic horsepower (termed pump power output)[78] is defined in HI 40.6–2014, which DOE proposes to incorporate by reference (see section III.D.1). HI 40.6–2014 also contains a test method for determining pump power output, as described in more detail in sections III.D.2.b.

In order to have consistent and comparable values of hydraulic horsepower, DOE notes that the DPPP test procedure must also specify a specific load point at which to determine the hydraulic horsepower. DOE proposes to categorize dedicated-purpose pool pumps based on the hydraulic horsepower determined at maximum speed on the reference curve for each DPPP variety and speed configuration (section III.C) and at full impeller diameter. DOE notes that this is consistent with the load points for single-speed pool filter pumps, waterfall pumps, and pressure cleaner booster pumps, as well as consistent with the high flow load point for two-speed pool filter pumps. The hydraulic horsepower at the maximum speed on the reference curve is slightly greater than the hydraulic horsepower associated with the high flow load point for multi-speed and variable-speed pool filter pumps, as the high flow point for those pumps is specified as 80 percent of the flow at maximum speed. However, DOE believes that measuring and reporting hydraulic horsepower at the maximum speed and full impeller diameter on the specified reference curve or head value for each DPPP variety would result in the most consistent and comparable ratings among DPPP varieties and speed configurations.

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[78] The term "pump power output" in HI–40.6 is defined as "the mechanical power transferred to the liquid as it passes through the pump, also known as pump hydraulic power." It is used synonymously with "hydraulic horsepower" in this document. However, where hydraulic horsepower is used to reference the size of a dedicated-purpose pool pump, it refers to the rated hydraulic horsepower.

To unambiguously specify the pump power characteristic that DOE proposes to use to describe the size of dedicated-purpose pool pumps, DOE proposes to introduce a new term, the "rated hydraulic horsepower," that is identified as the measured hydraulic horsepower on the reference curve (*i.e.,* curve C for self-priming and non-self-priming pool filter pumps) or the specified load point (*i.e.,* 17.0 ft or 10.0 gpm for waterfall pumps or pressure cleaner booster pumps, respectively) at the maximum speed and full impeller diameter for the rated pump. In addition, DOE proposes that the representative value for rated horsepower for each basic model of dedicated-purpose pool pump be determined as the mean of the rated hydraulic horsepower for each tested unit measured in accordance with the proposed DPPP test procedure.

While the DPPP test procedure and standards recommended by the DPPP Working Group are fundamentally based on the rated hydraulic horsepower, as proposed in this section III.E.1 of this NOPR, the DPPP Working Group also recommended that DOE assist in standardizing the testing and rating of dedicated-purpose pool pumps with regard to other typical horsepower metrics. (Docket No. EERE–2015–BT–STD–0008, No. 92 at pp. 319–322). Specifically, the June 2016 DPPP Working Group recommendations suggest that DOE should investigate a label that would facilitate proper application and include specified horsepower information. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #9 at p. 5).

DPPP motors often are rated with total horsepower (or service factor horsepower). As shown in Table III.16, ENERGY STAR, CA Title 20, and ANSI/APSP/ICC–15a–2013 all describe similar terms to "total horsepower"[79] as the product of the rated horsepower and the service factor of a motor used on a dedicated-purpose pool pump based on the maximum continuous duty motor power output rating allowable for nameplate ambient rating and motor insulation class (*i.e.,* total horsepower = rated horsepower × service factor). The rated horsepower, or nameplate horsepower, is similarly defined as the motor power output designed by the manufacturer for a rated speed of rotation, voltage, and frequency.

However, some of the industry definitions lack the requisite specificity to describe such terms for the purposes of rating and labeling dedicated-purpose pool pumps in an unambiguous, standardized, and consistent manner. For example, the DPPP Working Group discussed how service factors can vary significantly from model to model and are currently assigned arbitrarily at the discretion of the manufacturer. (Docket No. EERE–2015–BT–STD–0008, No. 56 at pp. 121–138).

To alleviate any ambiguity associated with rated horsepower, total horsepower, and service factor, DOE proposes to define the terms "DPPP nominal motor horsepower," "DPPP motor total horsepower," and "DPPP service factor." DOE proposes to define these terms as follows:

- Dedicated-purpose pool pump nominal motor horsepower means the nominal motor horsepower as determined in accordance with the applicable procedures in NEMA–MG–1–2014.
- Dedicated-purpose pool pump motor total horsepower (also known as service factor horsepower) means the product of the dedicated-purpose pool pump nominal motor horsepower and the dedicated-purpose pool pump service factor of a motor used on a dedicated-purpose pool pump based on the maximum continuous duty motor power output rating allowable for the nameplate ambient rating and motor insulation class.
- Dedicated-purpose pool pump service factor means a multiplier applied to the rated horsepower of a pump motor to indicate the percent above nameplate horsepower at which the motor can operate continuously without exceeding its allowable insulation class temperature limit.

The proposed definitions are developed based on the existing industry definitions for these terms. However, the term "dedicated-purpose pool pump nominal motor horsepower" is defined slightly differently than the terms "rated horsepower" or "nameplate horsepower," which are synonymous in the industry. Specifically, DOE has proposed to define DPPP nominal motor horsepower based on the nominal horsepower of the motor with which the dedicated-purpose pool pump is distributed in commerce, as determined in accordance with the applicable procedures in NEMA MG–1–2014, "Motors and Generators." NEMA MG–1–2014 describes consistent and comprehensive methods for determining the nominal horsepower of motors, including motors used in dedicated-purpose pool pumps, based on certain performance characteristics of the motor. For single-phase small and medium AC motors, the design and performance characteristics that serve as the basis for determining the applicable nominal horsepower are described in section 10.34 of part 10 of NEMA MG–1–2014, "Basis of Horsepower Rating." Specifically, the horsepower rating from small and medium AC induction motors up to 10 nominal horsepower is based on the minimum breakdown torque for each model, as determined by testing at a starting temperature of 25 °C. For polyphase small and medium AC motors, the applicable locked-rotor torque, breakdown torque, pull-up torque, slip, and locked-rotor current requirements for determining nominal horsepower are described in section I of part 12 of NEMA MG–1–2014, as summarized in Table III.17. DOE proposes to incorporate by reference these sections of NEMA MG–1–2014 into the DPPP test procedure.

TABLE III.17—SUMMARY OF RELEVANT NEMA MG–1–2014 SECTIONS APPLICABLE TO SMALL AND MEDIUM SINGLE- AND THREE-PHASE AC MOTORS

Characteristic	Single-phase AC motors	Three-phase AC motors
Breakdown Torque.	Section 10.34 of NEMA MG–1–2014*.	Section 12.39 of NEMA MG–1-2014*
Locked-Rotor Torque.	N/A	Section 12.37 or 12.38 of NEMA MG–1-2014*
Pull-up Torque	N/A	Section 12.40 of NEMA MG–1-2014*
Locked-rotor current.	N/A	Section 12.35.1 of NEMA MG–1-2014*
Slip	N/A	Section 1.19*

*Based on testing in accordance with section 12.30 of NEMA MG–1–2014.

Similarly, for direct current (DC) motors, including electrically commutated motors, section 10.62 of Part 10 of NEMA MG–1–2014, "Horsepower, Speed, and Voltage Ratings," describes the requirements for determining the nominal horsepower based on the applicable rated load speed and rated voltages for these motors. To clearly specify how DPPP nominal motor horsepower would be determined based on the procedures in NEMA MG–1–2014, DOE also proposes to include instructions in the DPPP test procedure that reference the relevant sections of NEMA MG–1–2014.

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[79] ANSI/APSP/ICC–15a–2013 defines this term as service factor horsepower. CA Title 20 defines this as "total horsepower (of an AC motor)."

NEMA MG–1–2014 also describes standardized service factor values based on the nominal horsepower rating for open AC motors in table 12–4 of section 12.51, "Service Factor of Alternating-Current Motors." For AC motors not covered by table 12–4 of section 12.51 of NEMA MG–1–2014, section 12.51.2 prescribes a service factor of 1.0. DOE proposes to require assignment of these service factors as the DPPP service factor for AC motors. Section II of Part 12 of NEMA MG–1–2014 addressing DC motors does not provide information regarding service factor, as nominal synchronous speeds are typically not applicable to DC motors. As such, DOE proposes to assign DC motors a DPPP service factor of 1.0, effectively making the nominal horsepower equivalent to the total horsepower of the dedicated-purpose pool pump, consistent with the convention for rating such motors in the motor industry.

Finally, to specify how to calculate dedicated-purpose pool pump total horsepower, DOE proposes to specify that total horsepower would be calculated as the product of the DPPP nominal motor horsepower and the DPPP service factor, both determined in accordance with the applicable provisions in the DPPP test procedure.

DOE believes such standardized rating methods are consistent with the recommendations of the Working Group, would be beneficial to consumers in selecting and applying the equipment, and are consistent with existing methods used to rate motors today.

DOE also believes that the methods described to determine DPPP nominal motor horsepower, DPPP motor total horsepower, and DPPP service factor apply to all motors that are distributed in commerce with dedicated-purpose pool pumps that are proposed to be subject to the test procedures recommended by the DPPP Working Group. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #1–2 and #6 at pp. 1–2 and 5) Specifically, the proposed motor rating requirements would be applicable to the following varieties of dedicated-purpose pool pumps:

- Self-priming pool filter pumps less than 2.5 rated hydraulic horsepower
- Non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower
- Pressure cleaner booster pumps
- Waterfall pumps

DOE notes that these standardized horsepower metrics would be intended to support proposed labeling provisions for dedicated-purpose pool pumps, which are discussed further in section III.G.

DOE requests comment on the proposal to use rated hydraulic horsepower as the primary standardized metric to describe DPPP "size" with regard to specifying the test procedure and energy conservation standards for dedicated-purpose pool pumps.

DOE requests comment on the proposal to determine the representative value of rated hydraulic horsepower as the mean of the measured rated hydraulic horsepower values for each tested unit.

DOE requests comment on the proposed definitions and testing methods for "dedicated-purpose pool pump nominal motor horsepower," "dedicated-purpose pool pump service factor," and "dedicated-purpose pool pump motor total horsepower."

Additionally, DOE seeks comment on whether the proposed test methods are applicable to all motors distributed in commerce with applicable dedicated-purpose pool pumps. If not, DOE requests additional information regarding the characteristics of any motors for which these procedures would not be applicable and any suggestions regarding alternative procedures to determine dedicated-purpose pool pump nominal motor horsepower, dedicated-purpose pool pump service factor, and dedicated-purpose pool pump motor total horsepower.

2. Determination of Self-Priming Capability

As discussed in section III.A.3.b, DOE proposes separate definitions for self-priming and non-self-priming pool filter pumps based on their capability to self-prime as determined based on testing in accordance with NSF/ANSI 50–2015. As these definitions rely on the NSF/ANSI 50–2015 test method to determine self-priming capability, DOE proposes to incorporate by reference relevant sections of the NSF/ANSI 50–2015 standard and also proposes several modifications and additions to improve repeatability and consistency of the test results. Specifically, section C.3 of Annex C of NSF/ANSI 50–2015 contains the relevant test parameters, test apparatus, and testing instructions for determining the self-priming capability of self-priming and non-self-priming pool filter pumps.

In general, the self-priming capability test described in NSF/ANSI 50–2015 consists of situating a pump above the water level of the pool or water tank and connecting the pump to a riser pipe that is rises a minimum of 5 feet above the water level. The pump suction inlet must also be a minimum of 5 pipe diameters from any 90 degree elbow in the riser pipe connecting the vertical and horizontal segments of the pipe, as shown in Figure III.6.

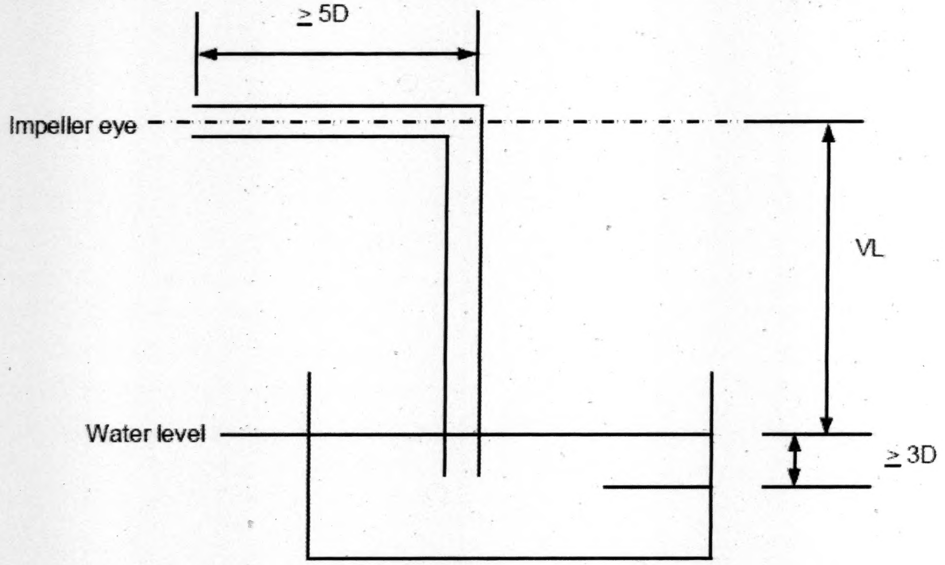

Figure III.6. Test Apparatus for Testing of Self-Priming Capability for Pool Filter Pumps. (In the Figure, D = nominal riser pipe diameter and VL = vertical lift, which much be at least 5.0 feet, adjusted to a nominal conditions. Source: NSF/ANSI 50-2015, figure C.1.)

The pump is then installed according to manufacturer's instructions (including initial priming), turned on, and the timer started. The elapsed time to steady discharge gauge reading or full discharge flow is the "measured priming time (MPT)," which is then adjusted to the "true priming time (TPT)" based on the relative diameters of the pump suction inlet and the riser pipe.[80]

To determine the self-priming capability of self-priming and non-self-priming pool filter pumps, DOE proposes to follow the test method specified in section C.3 of Annex C of NSF/ANSI 50–2015 with several minor modifications to improve test consistency and repeatability, as well as conform with the proposed definitions for self-priming and non-self-priming pool filter pumps presented in section III.A.3.b. First, where section C.3.2, "Apparatus," and section C.3.4, "Self-priming capability test method," state that the "suction line must be essentially as shown in annex C, figure C.1;" DOE proposes to note that the suction line refers to the riser pipe that extends from the pump suction inlet to the water surface. DOE also proposes to clarify that "essentially as shown in Annex C, figure C.1" means:

- The centerline of the pump impeller shaft is situated a vertical distance of 5.0 feet above the water level of a water tank of sufficient volume as to maintain a constant water surface level for the duration of the test;
- the pump draws water from the water tank with a riser pipe that extends below the water level a distance of at least 3 times the riser pipe diameter (*i.e.*, 3 pipe diameters); and
- the suction inlet of the pump is at least 5 pipe diameters from any obstructions, 90° bends, valves, or fittings.

DOE believes this modification will remove ambiguity from the test procedure and the appropriate test setup for evaluating the self-priming capability of pool filter pumps.

Further, DOE notes NSF/ANSI 50–2015 does not specify where the measurement instruments are to be placed in the test set up. Based on feedback from manufacturers, DOE understands that instruments are typically installed at the suction inlet of the pump. DOE proposes to specify that all measurements of head, flow, and water temperature must be taken at the pump suction inlet. It is also important that all measurements are taken with respect to a common reference plane, which DOE proposes should be the centerline of the pump impeller shaft. As measurement instruments may be mounted slightly above the centerline of the pump impeller shaft, all head measurements should be adjusted back to the centerline. NSF/ANSI 50–2015 does not specify methods for performing such adjustment. Therefore, DOE proposes that such adjustments be performed in accordance with section A.3.1.3.1 of HI 40.6–2014.

DOE also notes that, while NSF/ANSI provides some flexibility regarding the height, or VL, of the pump above the water level, DOE's proposed definitions do not provide such discretion and reference only a vertical lift of 5.0 feet, as discussed in section III.A.3.b. Therefore, the VL of the test apparatus must be exactly 5.0 feet when testing the self-priming capability of pool filter pumps that are not already certified with NSF/ANSI 50–2015 and variable VL heights are not allowed. Therefore, to precisely specify how VL would be measured, DOE proposes to clarify that VL must be determined from the height of the water to the centerline of the pump impeller shaft.

In addition, DOE acknowledges that the VL used in the test must be representative of the test conditions to ensure repeatability of the results. Specifically, the caption of figure C.1 also provides that the VL shall be corrected to a standard temperature of 68 °F, a pressure of 14.7 psia, and a water density of 62.4 lb/ft³. This ensures that tests performed at locations with, for example, a significantly higher or lower ambient pressure, would result in comparable results. However, NSF/ANSI 50–2015 does not provide instructions regarding how such correction is to be performed. Fundamentally, the vertical height of a column of fluid of consistent diameter will vary proportionally with the temperature of the fluid (which impacts the density) and the ambient pressure. Therefore, DOE proposes that the VL of the test apparatus must be adjusted proportionally for variations in the density of the test fluid and/or variations in the ambient pressure. Specifically, decreases in density would increase the test apparatus VL, while increases in ambient pressure would decrease the test apparatus VL, as specified in equation (6). DOE notes that DOE's proposed definition for VL specifies a VL of 5.0 feet:

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[80] If the pump suction inlet and the riser pipe are the same diameter, MPT = TPT.

$$VL = 5.0\text{ft} \times \left(\frac{62.4\,{}^{\text{lb}}\!/_{\text{ft}^3}}{\rho_{\text{test}}}\right) \times \left(\frac{P_{\text{abs,test}}}{14.7\text{psia}}\right) \qquad \textbf{(6)}$$

Where:

VL = vertical lift of the test apparatus from the waterline to the centerline of the pump impeller shaft, in ft;

$\rho test$ = density of test fluid, in lb/ft³; and

$P_{atm,test}$ = absolute barometric pressure of test apparatus location at centerline of pump impeller shaft, in psia.

In addition, DOE notes that section C.3.2 of NSF/ANSI 50–2015 describes the instruments that are required to perform the test, but, with the exception of the time indicator, does not specify their required accuracy. DOE proposes to apply the accuracy requirements contained in HI 40.6–2014, which DOE also proposes would apply to all other measurements made under the DPPP test procedure, to the measurement devices noted in NSF/ANSI 50–2015, as detailed in Table III.18.

TABLE III.18—PROPOSED MEASUREMENT DEVICE ACCURACY REQUIREMENTS FOR MEASUREMENTS DEVICES SPECIFIED IN NSF/ANSI 50–2015

Measurement device	Proposed accuracy requirement	Source
Elapsed time indicator	±0.1 min	NSF/ANSI 50-2015
Gauge pressure indicating device	±2.5% of reading *	HI 40.6-2014
Temperature indicating device	±0.5 °F	HI 40.6-2014
Barometric pressure indicating device	±2.5% of reading *	HI 40.6-2014
Height	±0.1 inch	N/A

* The ±2.5 percent requirement applies to discharge, suction, and differential head measurements, as indicated in table 40.6.3.2.3, for values taken between 40 and 120 percent of BEP flow.

DOE also notes that NSF/ANSI 50–2015 does not specify an instrument for measuring distance. Therefore, DOE proposes to require instruments for measuring distance that are accurate to ±0.1 inch. DOE believes this will improve the consistency and repeatability of test results and ensure all results are, in fact, indicative of the actual performance. DOE also notes that this is consistent with the proposed requirements for distance-measuring instruments in section III.D.2.f.

In section C.3.3, "Test conditions," NSF/ANSI 50–2015 specifies test conditions for both swimming pools and hot tubs/spas, as shown in Table III.19, and states that all pumps, except those labeled as for swimming pool applications only, are to be tested at the hot tub/spa conditions.

TABLE III.19—TEST CONDITIONS SPECIFIED IN NSF/ANSI 50–2015

Measurement	Swimming pool	Hot tub/ spa
Water Temperature	75 ± 10 °F	102 ± 10 °F
Turbidity	≤15 NTU*	≤15 NTU

* NTU = Nephelometric Turbidity Units; a measure of how much light is scattered by the particles contained in a water sample.

DOE notes that HI 40.6–2014, which is proposed to be incorporated by reference into the DPPP test procedure (see section III.D.1), also contains requirements for water conditions when testing pumps. Specifically, HI 40.6–2014 specifies that all testing must be conducted with "clear water" that is between 50 and 86 °F, where clear water means water with a maximum kinematic viscosity of 1.6×10^{-5} ft²/s and a maximum density of 62.4 lb/ft³.

With regard to the temperature requirements, DOE notes that, although all pumps addressed by this rule are dedicated-purpose pool pumps, storable electric and rigid electric spa pumps are excluded from the proposed test procedure, as discussed in section III.A.5. While DOE acknowledges that some dedicated-purpose pool pumps may be installed in the field in either swimming pools or permanent spas, DOE believes that the swimming pool temperatures would be more applicable to the equipment under consideration in this rule. Therefore, DOE proposes that tests of self-priming capability for those pool filter pumps not already certified with NSF/ANSI 50–2015 be conducted at temperatures representative of swimming pools. DOE clarifies that this proposal would only affect those pumps that are not already certified with NSF/ANSI 50–2015. As DOE's proposal for self-priming pool filter pump includes pool filter pumps that are certified as self-priming under NSF/ANSI 50–2015 (see section III.A.3.b), pool filter pumps may continue to be certified based on testing with hot tub/spa water conditions for the purposes of NSF/ANSI certification. In addition, DOE notes that the temperature range of clear water in HI 40.6–2014 is similar to that established by NSF/ANSI 50–2015 for swimming pools.

Regarding the specification of water properties or clarity, DOE notes that the viscosity and density requirements adopted in HI 40.6–2014 are intended to accomplish the same purpose as the turbidity limits in NSF/ANSI 50–2015, to ensure the test is conducted with water that does not have contaminants or additives in such concentrations that they would affect the thermodynamic properties of the water. In addition, DOE notes that viscosity is a characteristic of water that would affect the thermodynamic properties of water, but may not affect the turbidity.

Therefore, DOE finds the viscosity and density requirements in HI 40.6–2014 to potentially be more descriptive regarding the necessary criteria for ensuring all pump tests are conducted with clear water. Therefore, DOE proposes to require testing of the self-priming capability of pool filter pumps with clear water that is between 50 and 86 °F, as opposed to the existing water temperature and turbidity requirements contained in section C.3.3 of the NSF/ANSI 50–2015 test method. As the temperature range of clear water in HI 40.6–2014 is similar to that established by NSF/ANSI 50–2015 and the viscosity and density requirements are intended to accomplish the same goal, DOE does not believe that the proposed HI 40.6–2014 requirements would result in different measurements or results. In addition, DOE notes that, in NSF/ANSI 50–2015, the reported VL is to be corrected to a standard temperature of 68 °F, a pressure of 14.7 psia, and a water density of 62.4 lb/ft³, which further obviates the need for elevated temperature testing.

Section C.3.4, "Self-priming capability test method," of NSF/ANSI 50–2015 specifies that "the elapsed time to steady discharge gauge reading or full discharge flow" is to be recorded as the MPT. However, NSF/ANSI 50–2015 does not specify how to determine "steady discharge gauge reading or full discharge flow." DOE proposes to determine steady discharge gauge and full discharge flow as when the changes in head and flow, respectively, are within the tolerance values specified in table 40.6.3.2.2, "Permissible amplitude of fluctuation as a percentage of mean value of quantity being measured at any test point," of HI 40.6–2014. DOE also proposes that tested pumps must meet both pressure and flow stabilization requirements prior to recording MPT. That is, the measurement must be taken under stable conditions. However, DOE recognizes that it will take some non-trivial amount of time to determine stabilized flow prior to recording the elapsed time, which would then no longer be indicative of the time at which the pump reached that flow and head point. Therefore, DOE also proposes to clarify that the elapsed time should be recorded when steady state pressure and flow readings have been achieved, where steady state is achieved when the measured data remain constant within the permissible amplitudes of fluctuation defined in table 40.6.3.2.2 of HI 40.6–2014. Then the MPT would be determined by examining the data and evaluating when that load point was first achieved. Note, DOE also proposes that both pressure and flow measurements be required to achieve steady state, as DOE believes both would be necessary to ensure the pump is operating at stable conditions.

Section C.3.4 of NSF/ANSI 50–2015 then specifies that the TPT is calculated by scaling the MPT based on the relative diameter of the riser pipe and the pump suction inlet according to the following equation (7):

$$\mathrm{TPT} = \mathrm{MPT} \times \left(\frac{\text{pump suction inlet size}}{\text{riser pipe diameter}}\right)^2 \qquad (7)$$

DOE notes that, while theoretically correct, testing with different riser pipe diameters could affect the accuracy and repeatability of the results, especially if pipes that are substantially larger or smaller than the pump suction inlet are used. Therefore, DOE proposes that testing of self-priming capability of pool filter pumps that are not already certified with NSF/ANSI 50–2015 be performed with riser pipe that is of the same pipe diameter as the pump suction inlet. Therefore, no adjustment of MPT would be required and TPT would be measured directly.

Section C.3.4 of NSF/ANSI 50–2015 also specifies that the complete test method must be repeated, such that two TPT values are generated. However, NSF/ANSI 50–2015 does not specify how these duplicative measurements should be treated, but does require in section C.3.5 that both measurements must be less than 6 minutes or the manufacturer's specified TPT, whichever is greater. However, DOE notes that the criteria for TPT established in DOE's proposed definitions instead reference a TPT of 10.0 minutes. Consistent with this intent, DOE believes that it would be most appropriate to specify that both test runs result in TPT values that are less than or equal to 10.0 minutes.

Similarly, section C.3.5 of NSF/ANSI 50–2015 describes the TPT criteria that pumps must meet in order to certify as self-priming under NSF/ANSI 50–2015 and the caption of figure C.1 specifies the VL criteria applicable to the NSF/ANSI 50–2015 test. As noted previously, DOE's proposed definitions reference a specific TPT of 10.0 minutes and VL of 5.0 feet. Therefore, DOE proposes to exclude section C.3.5 and the relevant portions of the VL definition in the caption of C.1 to be consistent with DOE's proposed definition.

Table III.20 provides a summary of DOE's proposed modifications and additions to NSF/ANSI 50–2015 to remove ambiguity from the SNF/ANSI 50–2015 test method, improve the repeatability of the test, and harmonize the test requirements with the other proposed DPPP test procedure requirements contained in this NOPR.

TABLE III.20—SUMMARY OF PROPOSED MODIFICATIONS AND ADDITIONS TO NSF/ANSI 50–2015 SELF-PRIMING CAPABILITY TEST

NSF/ANSI 50–2015 Section	NSF/ANSI 50–2015 Specification	DOE Proposed modification/addition
Section C.3.2, "Apparatus," and Section C.3.4, "Self-priming capability test method".	"Essentially as shown in Annex C, figure C.1"	More clearly specify the test setup requirements, where VL = 5.0 feet, adjusted to nominal conditions of 14.7 psia and a water density of 62.4 lb/ft³.

TABLE III.20—SUMMARY OF PROPOSED MODIFICATIONS AND ADDITIONS TO NSF/ANSI 50–2015 SELF-PRIMING CAPABILITY TEST—Continued

NSF/ANSI 50–2015 Section	NSF/ANSI 50–2015 Specification	DOE Proposed modification/addition
Section C.3.2, "Apparatus"	Measurement Instruments (no accuracy requirements).	Accuracy requirements contained in HI 40.6–2014, table 40.6.3.2.3, as applicable.
Section C.3.3, "Test conditions"	Water temperature and turbidity requirements; all measurements at hot tub/spa temperatures unless for swimming pool applications only.	Test with clear water between 50 and 86 °F, as specified in HI 40.6–2014.
Section C.3.4, "Self-priming capability test method".	Measure MPT at steady discharge gauge or full discharge flow.	Measure elapsed time at steady state pressure and temperature conditions; MPT is when those conditions were first achieved.
Section C.3.4, "Self-priming capability test method".	Adjust MPT to TPT based on relative diameter of suction inlet and pipe diameter.	Use pipe of the same diameter as the suction inlet (MPT = TPT).
Section C.3.5, "Acceptance criteria," and caption of figure C.1.	TPT of 6 minutes or the manufacturer's specified recommended time, whichever is greater and VL of 5.0 feet or the manufacturer's specified lift, whichever is greater.	Excluded; TPT = 10 minutes and VL = 5.0 feet adjusted to nominal conditions of 14.7 psia and a water density of 62.4 lb/ft^3.

DOE requests comment on the proposal to incorporate by reference the test method contained in section C.3 of NSF/ANSI 50–2015, with the minor modifications and additions summarized in Table III.20, to measure the self-priming capability of pool filter pumps.

3. Determination of Maximum Head

As noted in section III.A.4.a, waterfall pumps are, by definition, pool filter pumps with maximum head less than or equal to 30 feet, and a maximum speed less than or equal to 1,800 rpm. Therefore, in order to unambiguously distinguish waterfall pumps from other varieties of pool filter pumps, DOE must establish a specific and repeatable method for determining maximum head of pool filter pumps. Based on the demonstrated relationship between flow and head, DOE understands the maximum head to be associated with the minimum flow of the pump. However, DOE also understands that pumps cannot always be operated safely or reliable at zero or very low flow conditions. Therefore, DOE proposes that, for the purposes of differentiating waterfall pumps from other varieties of pool filter pumps, the maximum head of pool filter pumps be determined based on the measured head value associated with the maximum speed and the minimum flow rate at which the pump is designed to operate continuously or safely. DOE notes that the minimum flow rate will be assumed to be zero unless otherwise specified in the manufacturer literature.

DOE requests comment on the proposed method for determining the maximum head of pool filter pumps when differentiating waterfall pumps from other pool filter pump varieties.

F. Representations of Energy Use and Energy Efficiency

Manufacturers of dedicated-purpose pool pumps within the scope of the DPPP test procedure would be required to use the test procedure proposed in this rulemaking when making representations about the energy efficiency or energy use of their equipment. Specifically, 42 U.S.C. 6314(d) provides that "[n]o manufacturer . . . may make any representation . . . respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing."

Therefore, manufacturers of equipment that are addressed by this test procedure would have 180 days after the promulgation of any TP final rule to begin using the DOE procedure as the basis for representations. However, manufacturers would not be required to certify or make representations regarding the performance of applicable dedicated-purpose pool pumps using the WEF metric until the compliance date of any potential energy conservation standards that DOE may set for dedicated-purpose pool pumps. However, if manufacturers elect to make representations of WEF prior to such compliance date, they would be required to do so using the DOE test procedure.

As discussed in section III.E.1, DOE also proposes standardized and consistent methods for determining several DPPP horsepower metrics, including rated hydraulic horsepower, DPPP nominal motor horsepower, DPPP total horsepower, and DPPP service factor. Section III.E.1 also discusses how manufacturers currently use a variety of terms to refer to these DPPP motor characteristics. Similar to WEF, 180 days after the publication of any final rule establishing such test methods, the DPPP nominal motor horsepower, DPPP total horsepower, and DPPP service factor would be required to be based on values consistent with the DOE test procedure. DOE notes that this includes any common synonyms for such quantities. For example, all references to capacity of the motor, nameplate horsepower, DPPP motor capacity, rated horsepower, service factor horsepower, total horsepower, or similar metrics would need to be updated to refer to the DPPP nominal motor horsepower or DPPP total horsepower, as applicable, and generated based on the DPPP test methods for these metrics beginning 180 days after the publication of any DPPP test procedure final rule.

With respect to representations, generally, DOE understands that manufacturers often make representations (graphically or in numerical form) of energy use metrics, including EF, pump efficiency, overall (wire-to-water) efficiency, driver power input, and/or pump power output (hydraulic horsepower) and may make these representations at a variety of different load points or operating speeds. DOE proposes to allow manufacturers to continue making these representations. However, in order to ensure consistent and standardized representations across the DPPP industry and to ensure such representations are not in conflict with the reported WEF for any given DPPP model, DOE proposes to establish optional testing procedures for these parameters that are part of the DOE test procedure. DOE also proposes that, to the extent manufacturers wish to make representations regarding the performance of dedicated-purpose pool pumps using these additional metrics, they would be required to do so based on testing in accordance with the DOE test procedure.

DOE notes that pump efficiency, overall (wire-to-water) efficiency, driver power input, and/or pump power output (hydraulic horsepower) are already parameters that are described in HI 40.6–2014, which DOE proposes to incorporate by reference in the DOE test procedure (section III.D.1). DOE believes that further specification is not necessary regarding the determination of these parameters.

Regarding EF, which is currently the metric most commonly used to describe DPPP performance, DOE proposes to adopt in the DOE test procedure, optional provisions that describe how to calculate EF at any given load point. Specifically, DOE also proposes to establish the four most common reference curves (curves A, B, C, and D), as shown in Table III.21.

TABLE III.21—SYSTEMS CURVES FOR OPTIONAL EF TEST PROCEDURE

System curve	Definition
Curve A	$H = 0.0167 \times Q^2$.
Curve B	$H = 0.050 \times Q^2$.
Curve C	$H = 0.0082 \times \text{Flow (gpm)}^2$.
Curve D	$H = 0.0044 \times \text{Flow (gpm)}^2$.

In addition, DOE proposes to specify that EF may be determined at any available speed. DOE recognizes that the existing industry programs and test methods for dedicated-purpose pool pumps restrict the load points at which EF may be determined for each DPPP configuration, based on the style of motor and/or control with which the pump is distributed in commerce, as shown in Table III.22. However, DOE does not believe such restriction is necessary for a voluntary metric, like EF.

TABLE III.22—PROPOSED SPEEDS FOR OPTIONAL EF TEST PROCEDURE

Pump speed(s)	Tested speeds
Single-speed	Max Speed on Curves A, B, C, and/or D.
Two-speed	Max and Min Speed on Curves A, B, C, and/or D.
Multi-speed	All Available Speed on Curves A, B, C, and/or D.
Variable speed	Max, Min, and Most Efficient Speed on Curves A, B, C, and/or D.

At each specified load point, DOE proposes that EF would be calculated in according to equation (8), which DOE notes is consistent with existing industry procedures (see section III.B.1):

$$EF = \frac{\left(\frac{Q}{1{,}000} \times 60\right)}{\left(\frac{P}{1{,}000}\right)} \qquad \textbf{(8)}$$

Where:

EF = energy factor, determined at any given load point, in kgal/kWh;

Q = flow rate at any given load point, in gal/min; and

P = input power to the motor (or controls, if present) at any given load point, in watts.

DOE proposes to incorporate units consistent with those proposed for the WEF, as recommended by the DPPP Working Group (see section III.B.1). That is, flow is determined in gal/min, input power to the motor or controls is determined in W, and EF is determined in kgal/kWh.

DOE also proposes that these load points would be found using the same test methods proposed in the DPPP test procedure. Specifically, the measurement of pump input power and flow rate, as well as any other relevant parameters, would be made in accordance with certain sections of HI 40.6–2014, with the specific exceptions, modifications, and additions noted in section III.D.2. However, instead of the load points specified for each of the DPPP varieties and speed configurations specified in sections III.C to calculate WEF, pump manufacturers could determine and make representations regarding EF on the optional system curves specified in Table III.21 at any desired speed.

If adopted, this means that 180 days after the publication date of any DPPP TP final rule, manufacturers would only be able to make representations of EF in accordance with the proposed DPPP test procedure. DOE believes providing a standardized method for determining EF at the specified load points would benefit manufacturers and consumers by ensuring consistent, reliable, and representative representations of energy performance, based on the optional EF metric. However, DOE does not wish to unnecessarily limit the extent to which manufacturers may make optional representations regarding EF at representative load points that would provide important information to the customer. DOE believes the proposed specific load points are comprehensive and represent all EF values that manufacturers either currently use to make representations, or may use to make in the future. Therefore, DOE believes this proposal would strike a balance between not limiting a manufacturer's ability to make EF representations at desired load points, but would provide the benefit of additional consistency and comparability of EF values by providing a specific test procedure and discrete load points at which EF could be determined.

DOE requests comment on its proposal to adopt optional provisions for the measurement of several other DPPP metrics, including EF, pump efficiency, overall (wire-to-water) efficiency, driver power input, and/or pump power output (hydraulic horsepower), in addition to the required representations.

DOE also requests comment on its belief that HI 40.6–2014 contains all the necessary methods to determine pump efficiency, overall (wire-to-water) efficiency, driver power input, and/or pump power output (hydraulic horsepower) and further specification is not necessary.

Finally, DOE requests comment on the proposed optional test procedure to determine EF on the specific reference curves A, B, C, and D at any available operating speed.

G. Labeling Requirements

In the June 2016 DPPP Working Group recommendations, the DPPP Working Group recommended that DOE investigate a label that would facilitate proper application and include specified horsepower information. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #9 at p. 5). As discussed in section III.E.1, the DPPP industry currently uses a variety of metrics to describe the "size" of a dedicated-purpose pool pump, including nominal motor horsepower, total horsepower, service factor horsepower, and hydraulic horsepower, among others. To standardize the terminology and testing procedures for determining DPPP size and motor horsepower information, as discussed in section III.E.1, DOE proposed definitions and specific test methods for determining rated hydraulic horsepower, DPPP nominal motor horsepower, DPPP motor total horsepower, and service factor. DOE also proposes specific sampling plans and calculation procedures for determining the representative values of these and other relevant DPPP metrics, as discussed in section III.I.1.

To implement the recommendations of the DPPP Working Group, DOE proposes to require labeling of all dedicated-purpose pool pumps for which the DPPP Working Group recommended test procedures. That is, DOE proposes that the labeling requirements be applicable to:

- Self-priming pool filter pumps less than 2.5 rated hydraulic horsepower[81]
- Non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower
- Pressure cleaner booster pumps
- Waterfall pumps

For self-priming pool filter pumps, non-self-priming pool filter pumps, pressure cleaner booster pumps, and waterfall pumps, DOE proposes that each DPPP unit clearly display on the permanent nameplate the following information:

- WEF, in kgal/kWh,
- Rated hydraulic horsepower,
- DPPP nominal motor horsepower,
- DPPP motor total horsepower, and
- service factor.

DOE also proposes specific requirements regarding the formatting of required information on the nameplate and the specific terminology that is required to be displayed. However, DOE proposes that these labeling requirements would be applicable to all units manufactured, including imported, on the compliance date of any potential energy conservation standards that may be set for dedicated-purpose pool pumps.

DOE requests comment on the proposed labeling requirements for dedicated-purpose pool pumps.

DOE requests comment on any other information that should be included on the permanent nameplate or in manufacturer literature to aid customers of dedicated-purpose pool pumps in proper selection and application of DPPP units.

H. Replacement DPPP Motors

DOE understands that DPPP motors wear out much more frequently than DPPP bare pumps and, thus, replacement DPPP motors are often sold to replace the original motor with which the pump was sold. Although DOE does not intend to regulate replacement DPPP motors because they do not (by themselves) meet the definition of a dedicated-purpose pool pump, DOE understands that it may be beneficial to have a method to determine an applicable WEF for replacement DPPP motors. This could be advantageous for replacement motor manufacturers to label their products and for utilities or efficiency programs to encourage the sale of replacement DPPP motors that would maintain or increase the savings of the dedicated-purpose pool pump, as installed in the field.

Therefore, DOE proposes to establish an optional method to determine the WEF for replacement DPPP motors. Specifically, under this method, the replacement motor would be paired with an appropriate DPPP bare pump and the combination would be subject to the proposed DOE test procedure for that dedicated-purpose pool pump, based on the DPPP variety and speed configuration.

DOE recognizes that replacement DPPP motors may be offered for sale or advertised to be paired with multiple DPPP bare pumps, and each combination may have a different WEF. Since each of these bare pumps may impact the WEF rating, each replacement DPPP motor and DPPP bare pump pairing would represent a unique pairing. Therefore, DOE proposes that the WEF for each replacement DPPP motor-DPPP bare pump pairing be determined separately. However, consistent with DOE's treatment of all equipment, DOE proposes to allow manufacturers to group similar replacement motor-bare pump pairings within a given replacement DPPP motor rating to minimize testing burden, while still ensuring that the rating is representative of minimum efficiency or maximum energy consumption of the group. Specifically, for other equipment, DOE provides that manufacturers may elect to group similar individual models within the same equipment class into the same basic model to reduce testing burden, provided all representations regarding the energy use of individual models within that basic model are identical and based on the most consumptive unit. *See* 76 FR 12422, 12423 (Mar. 7, 2011).[82] Similarly, manufacturers of replacement DPPP motors could opt to make representations of the WEF of each individual replacement DPPP motor and DPPP bare pump combination, or may elect to make WEF representations regarding a replacement DPPP motor combined with several individual DPPP bare pumps of the same equipment class, and rate the group with the same representative WEF value, which would be representative of the least efficient model. DOE also proposes that replacement DPPP motor manufacturers would need to make a statement, along with any advertised WEF value, regarding the specific DPPP bare pump to which it applies. If no specific DPPP bare pumps are listed in the manufacturer literature or otherwise along with any WEF representation, then the WEF value would be assumed to be applicable to any and all possible DPPP bare pumps. That is, it is representative of the least efficient DPPP bare pump available for each equipment class.

DOE requests comment on the proposed optional test procedure for replacement DPPP motors. Specifically, DOE seeks comment as to any additional details that should be addressed in testing a replacement DPPP motor with any given DPPP bare pump to determine applicable WEF values.

I. Certification and Enforcement Provisions for Dedicated-Purpose Pool Pumps

DOE must provide uniform methods for manufacturers to determine representative values of energy- and non-energy-related metrics, for each basic model. *See* 42 U.S.C. 6314(a)(2). These values are used when making public representations (as discussed in section III.E) and when determining compliance with prescribed energy conservation standards. DOE proposes that DPPP manufacturers must use a statistical sampling plan consistent with the sampling plan for pumps that is currently specified at 10 CFR 429.59. Manufactures would use these sampling plans to determine the representative values of WEF and other metrics necessary to demonstrate compliance with any energy conservation standards DOE may set for dedicated-purpose pool pumps. In addition, DOE commonly specifies enforcement procedures that DOE will follow to verify compliance of a basic model. The following sections III.I.1 III.I.2, and III.I.3 discuss DOE's proposed sampling plan, certification requirements, and enforcement provisions for dedicated-purpose pool pumps, respectively.

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[81] DOE notes that the DPPP Working Group only recommended standards for single-phase self-priming pool filter pumps less than 2.5 rated hydraulic horsepower. However, the DPPP Working Group recommended that the test procedure and reporting requirements would still be applicable to single- and three-phase self-priming pool filter pumps. Therefore, DOE believes it is appropriate to apply the proposed labeling requirements to three-phase pumps.

[82] These provisions allow manufacturers to group individual models with essentially identical, but not exactly the same, energy performance characteristics into a basic model to reduce testing burden. Under DOE's certification requirements, all the individual models within a basic model identified in a certification report as being the same basic model must have the same certified efficiency rating and use the same test data underlying the certified rating. The Compliance Certification and Enforcement final rule also establishes that the efficiency rating of a basic model must be based on the least efficient or most energy consuming individual model (*i.e.,* put another way, all individual models within a basic model must be at least as energy efficient as the certified rating). 76 FR at 12428–29 (March 7, 2011).

1. Sampling Plan

DOE provides, in subpart B to 10 CFR part 429, sampling plans for all covered equipment. As mentioned previously, the purpose of a statistical sampling plan is to provide a method to ensure that the test sample size (*i.e.,* number of units tested) was sufficiently large that a represented value of energy- and non-energy-related metrics is, in fact, representative of the population of units in the basic model. In the January 2016 general pumps TP final rule, DOE adopted sampling provisions applicable to pumps that were similar to those used for other commercial and industrial equipment. 81 FR 4086, 4135–36 (Jan. 25, 2016).

For dedicated-purpose pool pumps, DOE proposes to adopt statistical sampling plans similar to that adopted for pumps. That is, DOE proposes to amend 10 CFR 429.59 to require that, for each basic model of pump (including dedicated-purpose pool pumps), a sample of sufficient size must be randomly selected and tested to ensure that any representative value of WEF, EF, or other measure of energy consumption of a basic model for which customers would favor higher values is less than or equal to the lower of the following two values:

(1) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the maximum of the ith sample;

(2) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A of subpart B of 10 CFR part 429).

DOE also proposes similar provisions for quantities, such as pump input power, for which consumers would favor lower values. *See* 10 CFR 429.59(a)(1)(ii).

Under this proposal, for purposes of certification testing, the determination that a basic model complies with the applicable energy conservation standard would be based on testing conducted using the proposed DOE test procedure and sampling plan. The general sampling requirement currently applicable to all covered products and equipment provides that a sample of sufficient size must be randomly selected and tested to ensure compliance and that, unless otherwise specified, a minimum of two units must be tested to certify a basic model as compliant. 10 CFR 429.11(b)

DOE proposes to apply this same minimum sample size requirement to dedicated-purpose pool pumps. Thus, DOE proposes that a sample of sufficient size be selected to ensure compliance and that at least two units must be tested to determine the representative values of applicable metrics for each basic model. Manufacturers may need to test a sample of more than two units depending on the variability of their sample, as provided by the statistical sampling plan.

DOE notes that the proposed sampling provisions would be applicable to all energy-related metrics for which a DPPP manufacturer elected to make representations, including overall efficiency. DOE believes that, similar to other pumps, an upper confidence limit (UCL) and LCL of 0.95, which are divided by a de-rating factor of 1.05 and 0.95, respectively, would also be appropriate for dedicated-purpose pool pumps. Specifically, DOE believes dedicated-purpose pool pumps would realize similar performance variability to general pumps.

In addition to WEF, DOE also notes that the rated hydraulic horsepower, as defined in section III.E.1, is an important characteristic for determining the appropriate load points for testing and characterizing the capacity of a given DPPP model. Therefore, DOE also proposes a method to determine the "representative value" of rated hydraulic horsepower for each DPPP basic model. That is, DOE proposes that the representative value of rated hydraulic horsepower be determined as the average of all the tested units that serve as the basis for the rated efficiency for that basic model. Similarly, the DPPP nominal motor horsepower, DPPP motor total horsepower, and service factor are important characteristics that may aid customers in properly selecting and applying dedicated-purpose pool pumps. Consistent with the DPPP Working Group recommendations, as discussed in section III.E.1 and III.G, DOE proposes standardized methods for determining these DPPP motor characteristics and that such information be included on the permanent label affixed to each DPPP unit. To ensure such values are determined in a consistent manner, DOE also proposes that DPPP nominal motor horsepower, DPPP motor total horsepower, and service factor be determined based on the average of the test results, for each metric, from all the tested units that serve as the basis for the rating for that basic model. That is, DOE proposes specific test methods for determining DPPP nominal motor horsepower based on the tested torque, current, and slip characteristics of the DPPP motor. DOE proposes that the DPPP nominal motor horsepower be determined based on the average breakdown torque, locked-rotor torque, pull-up torque, locked-rotor current, and slip (as applicable) for each tested unit of DPPP motor. The representative values of DPPP service factor and DPPP motor total horsepower are then calculated based on that representative value of DPPP nominal motor horsepower. DOE recognizes that, in many cases, such testing may be performed by the motor manufacturer and, as such, DOE notes that the tested DPPP motor units and the DPPP units do not have to be the same units, provided they are representative of the same population.

Finally, consistent with provisions for other commercial and industrial equipment, DOE notes the applicability of certain requirements regarding retention of certain information related to the testing and certification of dedicated-purpose pool pumps, which are detailed under 10 CFR 429.71. Generally, manufacturers must establish, maintain, and retain certification and test information, including underlying test data for all certification testing for 2 years from the date on which the dedicated-purpose pool pump is no longer distributed in commerce.

DOE requests comment on the proposed statistical sampling procedures and certification requirements for dedicated-purpose pool pumps.

2. Certification Requirements

Paragraph (b) of 10 CFR 429.59 contains the certification requirements for certain styles of pump for which DOE adopted test procedures and standards in the January 2016 general pumps TP and ECS final rules. 81 FR 4086 (Jan. 25, 2016); 81 FR 4368 (Jan. 26, 2016). Since dedicated-purpose pool pumps are a style of pump, DOE proposes to amend 10 CFR 429.59 to include the reporting requirements for dedicated-purpose pool pumps. The general certification report requirements contained in 10 CFR 429.12 would apply to dedicated-purpose pool pumps as they do to other styles of pumps, including general pumps. However, as dedicated-purpose pool pumps have a unique test procedure and metric from general pumps, DOE proposes to establish unique certification requirements for dedicated-purpose pool pumps that would require manufacturers to supply certain additional information to DOE in certification reports to demonstrate compliance with any energy conservation standards that DOE may set.

Specifically, for a dedicated-purpose pool pump subject to the test procedure proposed in this NOPR (*i.e.*, self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps, see section III.A.6), DOE proposes that the following items be included in certification reports and made public on DOE's Web site:

- WEF in kilogallons per kilowatt-hour (kgal/kWh);
- Rated hydraulic horsepower in horsepower (hp);
- Maximum speed of rotation in revolutions per minute (rpm);
- Dedicated-purpose pool pump nominal motor horsepower in horsepower (hp);
- Dedicated-purpose pool pump motor total horsepower in horsepower (hp);
- Dedicated-purpose pool pump service factor (dimensionless);
- The speed configuration for which the pump is being rated (*i.e.*, single-speed, two-speed, multi-speed, or variable-speed);
- For self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps, the maximum head in feet; and
- For self-priming and non-self-priming pool filter pumps: The vertical lift and true priming time for the DPPP model and a statement regarding whether the pump is certified with NSF/ANSI 50–2015.

Such data are necessary for DOE to verify compliance of the given DPPP model, to determine the appropriate test procedure method to follow when verifying ratings, and to verify the accuracy of information provided on the label of any applicable DPPP models.

In the June 2016 DPPP Working Group recommendations, the Working Group also recommended that DOE require reporting of true power factor at all applicable test procedure load points in the public information provided in the certification report for all dedicated-purpose pool pumps to which the test procedure is applicable (*i.e.*, self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps). (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation # 7 at p. 4) As such, DOE is proposing that, for all dedicated-purpose pool pumps to which the test procedure is applicable, true power factor be reported at all applicable test procedure load points in the certification report and be made public on DOE's Web site.

In addition, as discussed above in section III.A.7, the DPPP Working Group recommended specific prescriptive requirements for dedicated-purpose pool pumps distributed in commerce with freeze protection controls to ensure freeze protection controls on dedicated-purpose pool pumps only operate when necessary and do not result in unnecessary, wasted energy use. Specifically, the DPPP Working Group recommended that all dedicated-purpose pool pumps distributed in commerce with freeze protection controls be shipped either:

(1) With freeze protection disabled or

(2) with the following default, user-adjustable settings:

a. The *default* dry-bulb air temperature setting is no greater than 40 °F; and

b. The *default* run time setting shall be no greater than 1 hour (before the temperature is rechecked); and

c. The *default* motor speed shall not be more than ½ of the maximum available speed.

(Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4).

Relatedly, the DPPP Working Group recommended that, in order to certify compliance with such a requirement, DPPP manufacturers be required to make a statement certifying compliance to the applicable design requirement and make available publicly as part of their literature the details by which they have met the applicable design standard. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6B at p. 4). The DPPP Working Group specifically recommended that, as part of certification reporting, manufacturers must include the default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm). (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4). Therefore, consistent with recommendations of the Working Group, DOE proposes that, for dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled, the certification report also include the default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm).

The DPPP Working Group also recommended that DOE include a verification procedure in case there was ever an issue regarding whether a product distributed in commerce actually had such features. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4). The verification test is discussed in more detail in section III.I.3.

Finally, for integral cartridge-filter and sand-filter pool pumps, the DPPP Working Group recommended DOE consider only a prescriptive standard, which requires such pumps be distributed in commerce with pool pump timers. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #2B at pp. 1–2) Relatedly, the DPPP Working Group also recommended a definition for pool pump timer that describes the specific features and operational characteristics that applicable pool pump times must contain in order to comply with the prescriptive standard. The recommended definition defines pool pump timer as a pool pump control that automatically turns off a dedicated-purpose pool pump after a run-time of no longer than 10 hours. As such, for these DPPP varieties, DOE proposes the certification report contain the maximum run-time of the pool pump control with which the integral cartridge-filter or sand-filter pump is distributed in commerce.

In addition to the required elements, DOE recognizes that other DPPP characteristics may provide useful information to inform consumers or support programs related to dedicated-purpose pool pumps. As discussed during the DPPP Working Group negotiations, the input power and flow rate at each applicable load point and the EF at multiple load points would be useful for utilities in calculating energy savings associated with dedicated-purpose pool pumps in specific applications. (Docket No. EERE–2015–BT–STD–0008, No. 54 at pp. 5–7) As discussed in section III.F, DOE is proposing to establish in the DPPP test procedure specific methods to calculate EF at any desired speed on any of the specified optional system curves (*i.e.*, Curve A, B, C, or D). Therefore, to provide additional information to consumers and the market place, DOE proposes that the following information may optionally be included in certification reports and, if included, would be made public:

- Calculated driver power input and flow rate at each load point i (P_i and Q_i), in horsepower (hp) and gallons per minute (gpm), respectively; and/or

- Energy factor at any desired speed on any of the specified optional system curves (*i.e.*, Curve A, B, C, or D), along with the tested speed and the system curve associated with each energy factor value.

While useful to consumers and the public, DOE recognizes that manufacturers may incur additional burden conducting the testing for and reporting of these additional metrics. DOE reiterates that the reporting of these additional metrics would be optional and at the discretion of the manufacturer.

DOE notes that, as specified in paragraph (a) of 10 CFR 429.12, the certification requirements for covered products and equipment, including those proposed for dedicated-purpose pool pumps in this NOPR, are only applicable to equipment subject to an applicable energy conservation standard set forth in part 430 or 431. Therefore, the certification requirements proposed in this NOPR would only be required when and if any energy conservation standards for dedicated-purpose pool pumps are established and in effect.

DOE requests comment on the proposed mandatory and optional reporting requirements for certification of dedicated-purpose pool pumps.

3. Enforcement Provisions

Enforcement provisions govern the process DOE would follow when performing its own assessment of basic model compliance with standards, as described under subpart C of 10 CFR part 429. Specifically, subpart C describes the notification requirements, legal processes, penalties, specific prohibited acts, and testing protocols related to testing covered equipment to determine or verify compliance with standards. 10 CFR 429.102–429.134. DOE notes that the same general enforcement provisions contained in subpart C of 10 CFR part 429 would be applicable to dedicated-purpose pool pumps.

Related to enforcement testing of dedicated-purpose pool pumps, as specified in 10 CFR 429.110(e), DOE would conduct the applicable DPPP test procedure, once adopted, to determine the WEF for tested DPPP models. In addition, DOE believes that, as dedicated-purpose pool pumps have relatively large shipments and are generally a high-volume piece of equipment, DOE should apply the enforcement testing sample size and calculations applicable to consumer products and certain high-volume commercial equipment specified in appendix A to subpart C of 10 CFR part 429. Therefore, DOE proposes to use, when determining performance for a specific basic model, the enforcement testing sample size, calculations, and procedures laid out in appendix A to subpart C of 10 CFR part 429 for consumer products and certain high-volume commercial equipment. These procedures, in general, provide that DOE would test an initial sample of at least 4 units and determine the mean WEF value and standard error of the sample. DOE would then compare these values to the WEF standard level, once adopted, to determine the compliance of the basic model or if additional testing (up to a total of 21 units) is required to make a compliance determination with sufficient confidence. DOE notes that DOE adopted enforcement testing sample size and calculations for general pumps in the January 2016 general pumps TP final rule. Specifically, in the January 2016 general pumps TP final rule, DOE adopted provisions at 10 CFR 429.110(e)(5)[83] stating that DOE would assess compliance of any pump basic models undergoing enforcement testing based on the arithmetic mean of up to four units. 81 FR 4086, 4145 (Jan. 25, 2016). To clarify that the enforcement provisions adopted in the January 2016 general pumps TP final rule are only applicable to those pumps subject to the test procedure adopted in the January 2016 general TP final rule, DOE also proposes to clarify the applicability of the provisions at 10 CFR 429.110(e)(5).

In addition, when determining compliance of any units tested for enforcement purposes, DOE proposes to adopt provisions that specify how DOE would determine the rated hydraulic horsepower at maximum speed on the reference curve, which describes the capacity of the DPPP model (see section III.E.1) for determining the appropriate standard level for any tested equipment (if applicable). Specifically, DOE proposes that DOE would perform the same test procedure for determining the rated hydraulic horsepower at maximum speed on the reference curve specified by the test procedure for each DPPP variety (see section III.C) on one or more units of each model selected for testing. DOE proposes that, if the rated hydraulic horsepower determined through DOE's testing (either the measured rated hydraulic horsepower for a single unit sample or the average of the measured rated hydraulic horsepower values for a multiple unit sample) is within 5 percent of the certified value of rated hydraulic horsepower, then DOE would use the certified value of rated hydraulic horsepower as the basis for determining the standard level for tested equipment. This would give manufacturers certainty regarding the appropriate standard level their equipment would be subject to in enforcement testing. However, if DOE's tested value of rated hydraulic horsepower is not within 5 percent of the certified value of rated hydraulic horsepower, DOE would use the arithmetic mean of all the rated hydraulic horsepower values resulting from DOE's testing when determining the standard level for tested equipment. DOE believes such an approach would result in more reproducible and equitable rating of equipment and compliance determinations among DOE, manufacturers, and test labs.

DOE developed the 5 percent tolerance on hydraulic power based on statistical analysis of the maximum allowed testing uncertainty due to fluctuations in measurements, measurement uncertainty, and the typical manufacturing variability. The maximum experimental uncertainty is discussed in HI 40.6–2014, which DOE proposes to incorporate by reference in the DOE test procedure (section III.D.1). DOE estimated the manufacturing variability based on the maximum tolerances on head and flow that are allowed in the NSF/ANSI 50–2015 standard. Specifically, NSF/ANSI 50–2015 requires that the tested flow be within ±5 percent of the pump performance curve and the tested head be within −3 to +5 percent of the pump performance curve, whichever is greater (see section III.D.2.d). However, DOE recognizes that these are all worst-case uncertainties and that testing a unit with the maximum possible variability in every parameter would be extremely unlikely. Therefore, DOE assumed that the maximum uncertainty would represent a worst case. For the purposes of analysis, DOE assumed the maximum uncertainty was three standard deviations away from the mean (encompassing 99.7 percent of the population). In this enforcement testing procedure, DOE proposes to use a tolerance of one standard deviation. DOE notes that this is also consistent with the tolerances on flow and head allowed for in NSF/ANSI 50–2015.

In addition, DOE proposes similar procedures for relevant quantities necessary to differentiate the different varieties of pool filter pumps: Self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps. Specifically, to differentiate waterfall pumps, DOE proposes to establish an enforcement testing procedure for the maximum head value. Similar to rated hydraulic horsepower, DOE would perform the proposed test procedure for determining maximum head (discussed in section III.E.3) on one or more units and compare the testing results to the value of maximum head certified by the manufacturer. If the value certified by the manufacturer is within 5 percent of the test values, DOE would use the manufacturer's certified value and resultant equipment class. Otherwise, DOE would use the enforcement testing results to determine the applicable equipment class and standard level. Similarly, to differentiate self-priming and non-self-priming pool filter pumps, DOE would perform the self-priming capability test and determine the vertical lift and true priming time of one or more tested units. DOE would also use the manufacturer's certified values and equipment class designation, provided the vertical lift and true priming time determined in DOE's testing is within 5 percent of the manufacturer's certified values.

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[83] DOE notes that the 2016 general pumps TP final rule were originally adopted into 10 CFR 429.110(e)(1)(iv), but a recent rulemaking reorganized the enforcement provisions for various equipment, including pumps, to place the pump enforcement provisions in 10 CFR 429.110(e)(5). 81 FR 31827, 31841 (May 20, 2016).

DOE requests comment on the proposed enforcement provisions for dedicated-purpose pool pumps. Specifically, DOE seeks comment upon the applicability of a 5 percent tolerance on rated hydraulic horsepower, maximum head, vertical lift, and true priming time for each tested DPPP model or if a higher or lower percentage variation would be justified.

In addition, as discussed in section III.I.2, as part of its extended charter, the DPPP Working Group recommended requirements that require all dedicated-purpose pool pumps distributed in commerce with freeze protection controls be shipped either:

(1) With freeze protection disabled; or

(2) with the following default, user-adjustable settings:

a. The default dry-bulb air temperature setting is no greater than 40 °F; and

b. The default run time setting shall be no greater than 1 hour (before the temperature is rechecked); and

c. The default motor speed shall not be more than ½ of the maximum available speed.

(Docket No. EERE–2015–BT–STD–0008, No. 74 at pp. 16).

Relatedly, the DPPP Working Group recommended that DOE include a verification procedure in case there was ever an issue regarding whether a product distributed in commerce actually had such features. *Id.*

Therefore, based on the DPPP Working Group recommendations, DOE proposes a procedure to verify the presence and operation of any freeze protection controls distributed in commerce with any applicable dedicated-purpose pool pump. The verification procedure would consist of testing the dedicated-purpose pool pump with the default, as-shipped control settings in a test apparatus identical to that described in section III.D for determining the WEF of applicable pool pumps, except that the ambient temperature registered by the freeze protection ambient temperature sensor would also be able to be controlled. This could be accomplished, depending on the specific location and configuration of the temperature sensor by exposing the freeze protection thermocouple to a specific temperature by, for example, submerging the thermocouple in a water bath of known temperature, adjusting the ambient air temperature of the test chamber, or other means to simulate and vary the ambient temperature registered by the freeze protection temperature sensor(s).

The general procedure would begin by installing the DPPP unit in a test stand in accordance with HI 40.6–2014 with the pump powered on but not circulating water (*i.e.*, the controls are active and the flow or speed are set to zero). The temperature measured by the freeze protection temperature control would then be gradually decreased by 1 ± 0.5 °F every 5.0 minutes, starting at 42 ± 0.5 °F until the pump freeze protection controls initiate water circulation or 38 ± 0.5 °F, whichever occurs first. The freeze protection ambient temperature reading and DPPP rotating speed, if any, would be recorded after each reduction in temperature and subsequent stabilization (see stabilization requirements in III.D, which DOE proposes would also be applicable to this verification procedure).

If the DPPP freeze protection controls do not initiate water circulation at a temperature of 38 ± 0.5 °F, as measured by the freeze protection ambient temperature sensor, the test would conclude and the dedicated-purpose pool pump would be deemed compliant with the stated design requirement for freeze protection controls. If the freeze protection controls initiate water circulation, the temperature would be increased to 42 ± 0.5 °F and the dedicated-purpose pool pump would be allowed to run for at least 30.0 minutes. After 30.0 minutes, the freeze protection ambient temperature and rotating speed, if any, would be recorded again. If the dedicated-purpose pool pump initiated water circulation at a temperature greater than 40 °F; if the dedicated-purpose pool pump was still circulating water after 30.0 minutes of operation at 42 ± 0.5 °F; or if rotating speed for freeze protection was greater than one-half of the maximum rotating speed of the DPPP model, as certified by the manufacturer, that DPPP model would be deemed to not comply with the stated design requirement for freeze protection controls.

DOE requests comment on the proposed verification procedure for DPPP freeze protection controls.

DOE notes that the actual design requirements would be established in any ECS rulemaking for dedicated-purpose pool pumps and that this verification procedure would only be necessary if and when any such requirements are established.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that TP rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed this proposed rule, which would establish a new test procedure for dedicated-purpose pool pumps, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE tentatively concludes that the proposed rule, if adopted, would not result in a significant impact on a substantial number of small entities, as it would not, in and of itself, require the use of the proposed test procedure. That is, any burden associated with testing dedicated-purpose pool pumps in accordance with the requirements of this test procedure would not be required until the promulgation of any energy conservation standards final rule for dedicated-purpose pool pumps, as discussed in section II. On this basis, this NOPR has no incremental burden associated with it and a regulatory flexibility analysis is not required.

While DOE maintains that this proposed test procedure has no incremental burden associated with it when viewed as a stand-alone rulemaking, DOE recognizes that DPPP energy conservation standards are currently being considered in a negotiated rulemaking that is ongoing (Docket No. EERE–2015–BT–STD–0008) and may be proposed or promulgated in the near future. In addition, DOE realizes that manufacturers often provide information about the energy performance of the dedicated-purpose pool pumps they manufacture since this information is an important marketing tool to help distinguish their dedicated-purpose pool pumps from competitor offerings. While manufacturers may elect to make such representations regarding WEF or other DPPP energy performance characteristics, DOE reiterates that making such representations regarding the energy efficiency or energy use of covered DPPP models is voluntary and thus the proposed test procedure does not have any incremental burden associated with it. That is, if necessary, a manufacturer could elect to not make representations about the energy use of covered DPPP models. However, given the ongoing DPPP energy conservation standards rulemaking (Docket No. EERE–2015–BT–STD–0008) and the potential testing manufacturers may elect to undertake prior to the compliance date of any potential standards, DOE is estimating in this NOPR the full cost of developing certified ratings for covered DPPP models for the purposes of making representations regarding the energy use of covered equipment or certifying compliance to DOE under any future energy conservation standards. Therefore, while such is not required yet, DOE is presenting the costs associated with testing equipment consistent with the requirements of the proposed test procedure, as would be required to certify compliance with any future energy conservation standard. DOE presents the results of such analysis in the following sections.

However, DOE is not determining the significance of that burden with respect to manufacturers' financial situation or status as a small entity. As the use of the testing requirements contained in this NOPR is contingent upon the energy conservation standards rulemaking, DOE believes it would be more appropriate to analyze the effect of the combined burden associated with both the test procedure and energy conservation standards rulemakings in the manufacturer impact analysis performed as part of any energy conservation standards rulemaking. Therefore, the estimates provided in this test procedure regulatory flexibility analysis serve only to provide information about the possible burden manufacturers may incur while testing pumps using this DOE test procedure; they do not represent actual burden incurred by the industry as there is no incremental burden associated with the proposed test procedure until and unless any associated DPPP energy conservation standards final rule is published.

1. Burden of Conducting the Proposed DOE DPPP Test Procedure

As dedicated-purpose pool pumps would be newly regulated equipment, DOE currently has no test procedures or standards for this equipment. In this TP NOPR, DOE proposes to amend subpart Y to 10 CFR part 431 to include definitions and a test procedure applicable to a specific subset of dedicated-purpose pool pumps, including self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps. The proposed test procedure would not apply to integral cartridge-filter pool pumps, integral sand-filter pool pumps, storable electric spa pumps, or rigid electric spa pumps (see section III.A.6 for more discussion).

In the proposed test procedure, DOE proposes a new metric, called the weighted energy factor (WEF), to characterize the energy performance of dedicated-purpose pool pumps within the scope of this test procedure. The WEF is determined as a weighted average of water flow rate over the input power to the dedicated-purpose pool pump at different load points, depending on the variety of dedicated-purpose pool pump and the number of operating speeds with which it is distributed in commerce. The proposed test procedure contains the methods for determining: (1) The WEF and rated hydraulic horsepower for self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps; (2) the self-priming capability of pool filter pumps to effectively differentiate self-priming and non-self-priming pool filter pumps; (3) the WEF for replacement DPPP motors; and (4) optional test methods to determine additional energy performance metrics applicable to dedicated-purpose pool pumps. To determine the applicable measured values for determining DPPP performance, DOE proposes to incorporate by reference the test methods established in HI 40.6–2014, "Methods for Rotodynamic Pump Efficiency Testing," with certain exceptions.

This NOPR also proposes requirements regarding the sampling plan and representations for covered dedicated-purpose pool pumps at subpart B of part 429 of title 10 of the Code of Federal Regulations. The sampling plan requirements are similar to those for several other types of commercial equipment and, among other things, require a sample size of at least two units per DPPP basic model be tested when determining representative values WEF, as well as other DPPP performance metrics.

To estimate the burden associated with the testing and sampling plan requirements proposed in this TP NOPR, DOE understands that in order to conduct the proposed test procedure, each manufacturer would have to either (a) have the units tested in house or (b) have the units tested at a third party testing facility. If the manufacturer elects to test dedicated-purpose pool pumps in house, each manufacturer may have to undertake, at most, the following burden inducing activities: (1) Construct and maintain a test facility that is capable of testing dedicated-purpose pool pumps in compliance with the test procedure, including acquisition and calibration of any necessary measurement equipment, and (2) conduct the DOE test procedure on two units of each covered DPPP model.

DOE recognizes that many DPPP manufacturers already have DPPP test facilities of various configurations and conduct DPPP testing as part of an existing manufacturing quality control process, to develop DPPP performance information for new and existing products, and to participate in voluntary energy efficiency programs or to submit information to certain states as part of their energy code. However, DOE recognizes that, because such testing is not currently required or standardized, testing facilities may vary widely from one DPPP manufacturer to another. As such, DOE has estimated the maximum potential testing burden associated with this TP NOPR, which is associated with a situation where a given DPPP manufacturer does not have existing test facilities and would be required to construct such facilities to test equipment in accordance with any TP final rule. In addition, DOE discusses a more representative burden estimate that DOE believes is more indicative of the incremental burden manufacturers would likely encounter due to the testing requirements proposed in this TP NOPR based on the testing capabilities most manufacturers in the industry currently possess. The basis for both of these estimates is laid out in the subsequent sections in terms of physical equipment and testing costs, labor costs, the combined burden for in house testing, and third-party testing costs.

a. Estimated Equipment Costs for Testing Dedicated-Purpose Pool Pumps

In the maximum burden case where a DPPP manufacturer would be required to construct a test lab from scratch, manufacturers would be required to make significant capital outlays to acquire test equipment. The first necessary item for testing a dedicated-purpose pool pump is a water reservoir to hold the water that the pump circulates during testing. The size of the dedicated-purpose pool pump will directly affect the size of the necessary water reservoir. Manufacturers provided estimates to DOE on the cost of water reservoirs for a variety of sizes. Based on the information provided, DOE estimates the cost of a water reservoir to be $2.50 per gallon. Because the dedicated-purpose pool pumps vary in size, DOE is using a 1,000 gallon water reservoir as a typical size and thus estimates the cost at $2,500 for the water reservoir. Water conditioning equipment may also be necessary, in some cases, in support of the water reservoir and to ensure that water is maintained at the appropriate test temperature (the proposed test procedure requires testing with clear water between 50 and 86 °F, see section III.D.2.a). DOE estimates the cost of water conditioning equipment to be $2,000.

To complete the DPPP test loop, assorted piping and valves would be necessary to circulate water from the reservoir to the pump and regulate the flow and head of the water. Multiple diameter pipes, valves, and associated fittings may be required to accommodate different size dedicated-purpose pool pumps. The total costs for the values and piping will vary on pipe diameter as well as the actual testing laboratory configuration. DOE estimates a cost of $1,000 for the piping and valves necessary to test the dedicated-purpose pool pumps within the scope of the proposed test procedure.

In addition to water conditioning, the proposed DOE test procedure also requires the power supply characteristics (*i.e.*, voltage, frequency, voltage unbalance, and total harmonic distortion) to be maintained within specific values, as described in section III.D.2.e. Specifically as stated in Table III.15, the proposed power supply requirements must within a few percent of the rated voltage, frequency, and voltage harmonic distortion. Also, the total harmonic distortion must be limited throughout the test. In some situations, manufacturers may be required to acquire power conditioning equipment to ensure the power supplied to the DPPP motor or control is within the required tolerances. DOE estimated researched power supplies as well as manufacturers provided estimates of possible equipment costs which ranged from $100 to $20,000 for the proposed power supply. This range of equipment includes a variety of equipment specifications; however, DOE estimates the cost for power conditioning equipment as $2,000.

In addition to the physical testing apparatus, the proposed DPPP test procedure also contains requirements regarding the characteristics and accuracy of the measurement equipment necessary to precisely and accurately determine relevant measured quantities. The primary measurement equipment includes flow measuring equipment, pressure measuring equipment, and power measuring equipment.

Also, as discussed in section III.D.2.d, test facilities would need equipment to measure the flow rate in gallons per minute to verify that the pool pump is operating at the applicable load point. Manufacturers indicated that, for flow measurement equipment, they utilized magnetic flow measurement devices. These magnetic flow measurement devices vary in price based on the range of the device to accommodate the anticipated flow rate from different sizes of dedicated-purpose pool pumps. DOE researched flow measurement devices as well as was provided feedback from manufacturers about the typical prices of various sizes. DOE's research indicates that as the size of the flow meter increases, so does cost. Flow measurement devices ranged from $1,500 to $4,500 per DOE's research. DOE estimates a typical flow measurement equipment device to be $3,000 for compliance with the proposed TP NOPR.

Pressure measurement equipment could include a manometer, bourdon tube, digital indicator, or a transducer. DOE's research indicates that manufacturers use different options. Each of the different measurement devices has different prices. DOE estimated the cost of the different pressure measurement devices and estimates the average cost to be $950.

Finally, electrical measurement equipment is necessary to determine the input power to the dedicated-purpose pool pump, as measured at the input to the motor or controls, if present. There are multiple devices that can measure power and energy values. However, DOE proposes specific requirements regarding the accuracy and quantities measured for such power measuring equipment, as discussed in section III.D.2.f. In this case, only specific power analyzers and watt-amp-volt meters with the necessary accuracy can measure RMS voltage, RMS current, and real power up to at least the 40th harmonic of fundamental supply source frequency and having an accuracy level of ±2.0 percent of full scale when measured at the fundamental supply source frequency. DOE researched equipment as well as inquired with manufacturers about the equipment used and related costs. Based on information provided by manufacturers and DOE's own research, a range from $2,000 to $30,000 was found for the potential electrical measurement equipment. DOE estimates the typical cost for such electrical measurement equipment as $4,000.

Additionally, measurements of speed, time, height, and temperature would also be necessary, to perform the test procedure as proposed. Speed measurement equipment such as a tachometer, eddy current drag, torque meter, or other equipment may be necessary. Based on information supplied by manufacturers, DOE estimates the cost of measuring speed at $250. To verify that the testing fluid (*i.e.*, clear water) is within the specified temperature range, testing facilities will also need to measure temperature. DOE estimates a cost of $100 for potential temperature measurement devices. Also, as discussed in section III.D.2.f, test facilities would need equipment to measure height to determine the height above the reference plane for any pressure-measuring instruments, as well as measure the vertical lift when determining the self-priming capability of self-priming and non-self-priming pool filter pumps. DOE estimates that the cost of any distance measuring equipment would be minimal (*i.e.*, less than $10), as a standard tape measure would satisfy the proposed accuracy requirements (see section III.D.2.f and III.E.2).

Finally, to ensure that all data are taken simultaneously and properly recorded, a data acquisition system might also be necessary. DOE researched data acquisition systems and determined they ranged between $2,000 and $35,000. DOE estimates the typical cost for a data acquisition system as $19,000.

In total, DOE estimates the cost of acquiring all the necessary equipment and materials to construct a suitable test apparatus and determine applicable quantities to perform the proposed DPPP test procedure as approximately $43,800. However, DOE notes that the majority of DPPP manufacturers may already have existing testing capabilities to verify equipment performance, as well as certify performance under ENERGY STAR, in accordance with applicable state laws, or for other applicable DPPP programs.[84] Therefore, DOE believes the previously estimates $43,800 value is a worst-case estimate that is not representative of the likely burden manufacturers would actually be likely to incur. Specifically, many manufacturers indicated to DOE that they already possessed equipment necessary to comply with such programs, including test apparatus and suitable equipment to measure temperature, time, speed, pressure, flow, and a data acquisition system to compile such measurements. Manufacturers indicated that they also currently used a variety of power measuring devices, some of which would be compliant with the proposed accuracy and measurement requirements proposed in this NOPR (section III.D.2.f) and some of which would not. Similarly, manufacturers did not indicate use of any power conditioning equipment, which may or may not be required based on the existing power quality conditions of the test facility.[85] DOE finds it that, at most, current DPPP manufacturers would be required to acquire new power measurement equipment and power conditioning equipment to comply with DOE's proposed testing requirements, for a total cost of $15,000. However, DOE notes that, for some manufacturers, the cost could be a low as $0.

DOE requests comment on the capital cost burden associated with the proposed test procedure, including the estimated capabilities of current manufacturers.

Specifically, DOE requests comment on the estimate that the likely capital cost burden incurred by existing DPPP manufacturers would be between $0 and $15,000.

b. Labor Associated With Testing Dedicated-Purpose Pool Pumps

DOE also estimates the related labor necessary to complete the proposed test procedure. DOE estimates the cost of labor using the median hourly wage of $43.40.[86] Including fringe benefits, which are estimated to be nominally 30 percent of total compensation, the total hourly cost to an employer is estimated to be $56.42.[87] DOE received information from manufacturers about the typical time required to test a dedicated-purpose pool pump for ANSI/NSF–50, ENERGY STAR, and other applicable programs with similar testing requirements proposed in this NOPR.[88] Although a small sample size, the time for testing ranged from a few hours per test to an entire day when completing testing for multiple programs. The longer testing is a function of the stabilization requirements of ENERGY STAR that are greater than DOE has proposed in this document. The expected testing time for this proposed test procedure is between 3 to 5 hours depending on the number of speeds and corresponding number of test points. Using the labor rate established in the previous section, the total cost of labor for testing a dedicated-purpose pool pump ranges from $350 and $500 per basic model.[89]

DOE requests comment on the estimated time to complete a test of a single DPPP unit under the proposed test procedure.

c. Estimated Testing Cost per Manufacturer

To assess the total cost of complying with the proposed DPPP test procedure and rating applicable DPPP models, DOE estimates the combined capital and labor costs for DPPP manufacturers. As discussed above in section IV.B.1.a, based on DOE's analysis, the equipment necessary could total a maximum of $43,800, but would more likely range between $0 and $15,000. For the purpose of estimating a "typical" estimated burden associated with testing under the proposed test procedure, per manufacturer, DOE uses the $15,000 figure.

However, DOE notes that this capital cost would be distributed across all the units being tested by a given manufacturer. DOE researched the market and estimates 30 models of dedicated-purpose pool pumps produced by manufacturers. Manufacturers may also be able to group these dedicated-purpose pool pumps into basic models, so the actual quantity of basic models per manufacturer could be less than this range. (See section III.A.8 for a discussion of DOE's basic model definition and how individual models can be treated under such a definition.) To account for this, DOE analyzed DOE's DPPP database to determine the likely number of basic models a typical DPPP manufacturer would certify, based on the grouping provisions allowed for in the DPPP basic model definition. DOE estimates, based on similarities between some individual models in DOE's DPPP database, that DPPP manufacturers would each typically rate 15 unique basic models. Therefore, DOE distributed the estimated capital cost of $15,000 across the estimated15 basic models to determine the typical capital cost per DPPP model.

To determine the total burden of the proposed DPPP test procedure, DOE also estimates the labor cost per DPPP model. DOE previously estimated the labor cost as a range between $350 and $500 per basic model. However, as discussed in section III.I.1, manufacturers would be required to test at least two units of each basic model to determine the applicable ratings for that model. Thus, at least two tests would be required per basic model, resulting in approximately 30 tests per manufacturer, to rate all of their DPPP models that would be subject to the proposed test procedure. If a given DPPP manufacturer makes 15 basic models and tests 2 units, the resultant testing costs, including both capital expenditures and labor to conduct the test, are between $1,000 and $1,350 per DPPP basic model depending on the total labor time, number of speeds, and number of basic models.

DOE also recognizes that not all manufacturers have in-house testing facilities and may opt for independent third-party testing. This may be the most cost-effective solution for manufacturers with few basic models, so as to avoid all the capital cost burden associated with acquiring a test facility consistent with DOE's proposed testing requirements. Therefore, to estimate burden for these manufacturers, as well as verify the reasonableness of DOE's in-house testing estimate, DOE researched potential testing costs from independent testing labs. Based on input from third-party labs and manufacturers, DOE estimates the cost of third-party testing to be $4,000 per unit, or $11,000 per model.

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[84] See section III.B.1 for a review of applicable DPPP regulatory and voluntary programs.

[85] Many test facilities may inherently meet DOE's proposed requirements for power supply characteristics, as DOE proposed to use values that are likely to be widely available on the national electrical grid. See section III.D.2.e.

[86] United States Department of Labor. *Bureau of Labor Statistics Occupational Outlook Handbook.* Washington, DC. *http://www.bls.gov/oes/current/oes_nat.htm. Last accessed May 26, 2016.*

[87] U.S. Department of Labor, Bureau of Labor Statistics. 2015. *Employer Costs for Employee Compensation—Management, Professional, and Related Employees.* Washington, DC. *www.bls.gov/news.release/pdf/ecec.pdf.*

[88] See section III.B.1 for a discussion of applicable programs and the similarity to DOE's proposed test procedure.

[89] The costs are $225 and $450 respectively per unit, but the minimum number of units is 2 per basic model, therefore, costs are expressed in terms of basic model.

2. Review of DPPP Manufacturers

To determine the likely testing burden for applicable DPPP manufacturers, DOE researched the current DPPP industry to identify manufacturers of dedicated-purpose pool pumps and estimate the number of DPPP models that would be subject to the proposed test procedure for those manufacturers.

DOE conducted a focused inquiry into manufacturers of equipment covered by this rulemaking. During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved the review individual company Web sites and marketing research tools (*e.g.*, Dun and Bradstreet reports, Manta, Hoovers) to create a list of companies that manufacture pumps covered by this rulemaking. Using these sources, DOE identified 21 distinct manufacturers of dedicated-purpose pool pumps.

DOE notes that the Regulatory Flexibility Act requires analysis of, in particular, "small entities" that might be affected by the proposed rule. For the DPPP manufacturing industry, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purpose of the statute. DOE used the SBA's size standards to determine whether any small entities would be required to comply with the rule. The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* DPPP manufacturers are classified under NAICS 333911, "Pump and Pumping Equipment Manufacturing." The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

To determine the number of DPPP manufacturers that are small businesses and might be differentially affected by the proposed rule, DOE then reviewed these data to determine whether the entities met the SBA's definition of a small business manufacturer of dedicated-purpose pool pumps and then screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a "small business," are foreign-owned and operated, or are owned by another company. Based on this review, DOE has identified 5 companies that would be considered small manufacturers by the SBA definition in terms of the number of employees.

DOE requests comment regarding the size of DPPP manufacturing entities and the number of manufacturing businesses represented by this market.

3. Summary

The final cost per manufacturer primarily depends on the number of basic models the manufacturer sells. However, based on the previous assumptions and analysis, DOE estimates that DPPP manufacturers would, on average, have 15 DPPP basic models that would require rating under the proposed test procedure and sampling plan requirements, resulting in an initial testing cost of $1,350 per manufacturer per basic model assuming that the manufacturers only had to purchase power supplies and electrical measurement devices that meet the proposed requirements. In addition, DOE notes that these are not annual costs because DOE does not require manufacturers to retest a basic model annually. If a manufacturer modifies a basic model in a way that makes it more efficient or less consumptive or introduces a new basic model, new testing is required to determine the representative performance of the new or modified model. DOE estimates that manufacturers, on average, introduce new or significantly modified DPPP models approximately once every 5 years. Therefore, after the initial testing to newly certify all existing DPPP models, DOE estimates manufacturers would incur ongoing testing costs (primarily labor because the equipment because the manufacturer would have the equipment) of approximately $350 to $500 (depending on the number of speeds tested) per new basic model introduced or significantly modified.[90]

DOE requests comment on its assertion that manufacturers typically introduce or significantly modify basic models once every 5 years.

As discussed in section IV.B.2, DOE analyzed the industry for DPPP manufacturing to determine all manufacturers of dedicated-purpose pool pumps covered in this TP NOPR. Analysis of the industry determined that 45 percent of all DPPP manufacturers could be classified as small businesses according to SBA classification guidelines. Although 45 percent of the market could be considered a significant portion of the overall industry, DOE estimates that the proposed testing would only incur $1,350 in initial testing costs and $350 on an ongoing basis to certify new or modified models. These estimates are based on the assumption that many DPPP manufacturers, including small manufacturers, are already participating in compulsory or voluntary programs that require similar testing and, therefore, the burden associated with testing and rating dedicated-purpose pool pumps within the scope of the proposed test procedure would be similar to the testing currently conducted by manufacturers subject to this rulemaking.

However, DOE reiterates that the proposed test procedure and sampling requirements would not result in a significant impact on a substantial number of small entities, as it would not, in and of itself, require the use of the proposed test procedure. That is, any burden associated with testing dedicated-purpose pool pumps in accordance with the requirements of this test procedure would not be required until the promulgation of any ECS final rule for dedicated-purpose pool pumps, as discussed in section II. DOE would analyze the effect of the combined burden associated with both the test procedure and ECS rulemakings in the manufacturer impact analysis performed as part of any ECS rulemaking establishing standards for this equipment.

Based on the criteria outlined earlier, DOE certifies that the proposed test procedure would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

DOE requests comment on the testing currently conducted by DPPP manufacturers, including the magnitude of incremental changes necessary to transform current test facilities to conduct the DOE test procedure as proposed in this NOPR.

DOE requests comment on the tentative conclusion that the proposed test procedure will not have a significant economic impact on a substantial number of small entities.

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[90] DOE assumes that the new equipment for testing is disaggregated across the initial estimated 15 basic models. Therefore, any new tests would be related to the labor required to complete the test.

C. Review Under the Paperwork Reduction Act of 1995

All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and industrial equipment. 10 CFR part 429, subpart B. In an application to renew the OMB information collection approval for DOE's certification and recordkeeping requirements filed in January 2015, DOE included an estimated burden for manufacturers of pumps in case DOE ultimately sets energy conservation standards for this equipment, and OMB approved the revised information collection for DOE's certification and recordkeeping requirements. 80 FR 5099 (Jan. 30, 2015). In the January 2016 general pumps ECS final rule, DOE established energy conservation standards and reporting requirements for certain categories of pumps and estimated that public reporting burden for the certification for pumps, similar to other covered consumer products and commercial equipment, would average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 81 FR 4368, 4428 (Jan. 26, 2016). As dedicated-purpose pool pumps are a specific style of pump and the testing and certification requirements proposed in this NOPR are similar to those established for general pumps in the January 2016 general pumps TP final rule, DOE believes that the estimated reporting burden of 30 hours would also be applicable for dedicated-purpose pool pumps. 81 FR 4086 (Jan. 25, 2016). DOE notes that, although this test procedure rulemaking discusses recordkeeping requirements that are associated with executing and maintaining the test data for this equipment (see section III.I.1), certification requirements would not need to be performed until the compliance date of any final rule establishing energy conservation standards for pumps.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes definitions and a test procedure for dedicated-purpose pool pumps that it expects will be used to develop and implement future energy conservation standards for this equipment. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule considers a test procedure for a pump that is largely based upon industry test procedures and methodologies resulting from a negotiated rulemaking, so it would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's regulatory action, which would prescribe the test procedure for measuring the energy efficiency of dedicated-purpose pool pumps, is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in the following commercial standards:

(1) UL 1081, ("ANSI/UL 1081–2014"), "Standard for Swimming Pool Pumps, Filters, and Chlorinators," 6th Edition, January 29, 2008, including revisions through March 18, 2014.

(2) National Electrical Manufacturers Association (NEMA) MG–1–2014, "Motors and Generators," 2014, section 1.19, "Polyphase Motors"; section 10..34, "Basis of Horsepower Rating"; section 10.62, "Horsepower, Speed, and Voltage Ratings"; section 12.30, "Test Methods"; section 12.35, "Locked-Rotor Current of 3-Phase 60-Hz Small and Medium Squirrel-Cage Induction Motors Rated at 230 Volts"; section 12.37, "Torque Characteristics of Polyphase Small Motors"; 12.38, "Locked-Rotor Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings"; section 12.39, "Breakdown Torque of Single-speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings"; and section 12.40, "Pull-Up Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings."

(3) NSF International Standard (NSF)/ American National Standards Institute (ANSI) 50–2015, ("NSF/ANSI 50–2015"), "Equipment for Swimming Pools, Spas, hot Tubs and Other Recreational Water Facilities," approved January 26, 2015, section C.3, "self-priming capability," of Annex C, "Test methods for the evaluation of centrifugal pumps."

In addition, the proposed rule expands the incorporation by reference of Hydraulic Institute (HI) 40.6–2014, ("HI 40.6–2014") "Methods for Rotodynamic Pump Efficiency Testing," (except for section 40.6.4.1, "Vertically suspended pumps"; section 40.6.4.2, "Submersible pumps"; section 40.6.5.3, "Test report"; section 40.6.5.5.2, "Speed of rotation during testing"; section 40.6.6.1, "Translation of test results to rated speed of rotation"; Appendix A, section A.7, "Testing at temperatures exceeding 30 °C (86 °F)"; and Appendix B, "Reporting of test results (normative)";) copyright 2014. HI 40.6–2014 is already IBR approved for § 431.464, and appendix A to subpart Y of part 431. 10 CFR 431.463. As such, DOE proposes only to modify the existing incorporation by reference to extend the applicability of certain sections to the new appendix B to subpart Y that would contain the DPPP test procedure.

Although this proposed test procedure is not exclusively based on these industry testing standards, some components of the DOE test procedure would adopt definitions, test parameters, measurement techniques, and additional calculations from them without amendment. The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

N. Materials Incorporated by Reference

In this NOPR, DOE proposes to newly incorporate by reference two industry standards related to pump nomenclature, definitions, and test specifications, which DOE has referenced in its proposed definitions and test procedure.

Specifically, the definitions proposed in this NOPR, as well as relevant testing procedures to determine self-priming capability, incorporate by reference the following sections of the following standards:

(1) UL 1081, ("ANSI/UL 1081–2014"), "Standard for Swimming Pool Pumps, Filters, and Chlorinators," 6th Edition, January 29, 2008, including revisions through March 18, 2014.

(2) National Electrical Manufacturers Association (NEMA) MG–1–2014, "Motors and Generators," 2014, section 1.19, "Polyphase Motors"; section 10..34, "Basis of Horsepower Rating"; section 10.62, "Horsepower, Speed, and Voltage Ratings"; section 12.30, "Test Methods"; section 12.35, "Locked-Rotor Current of 3-Phase 60-Hz Small and Medium Squirrel-Cage Induction Motors Rated at 230 Volts"; section 12.37, "Torque Characteristics of Polyphase Small Motors"; 12.38, "Locked-Rotor Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings"; section 12.39, "Breakdown Torque of Single-speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings"; section 12.40, "Pull-Up Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings."

(3) NSF International Standard (NSF)/ American National Standards Institute (ANSI) 50–2015, ("NSF/ANSI 50–2015"), "Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities," approved January 26, 2015, section C.3, "self-priming capability," of Annex C, "Test methods for the evaluation of centrifugal pumps."

DOE proposes to incorporate by reference UL 1081–2014 into 10 CFR 431.462 and NSF/ANSI 50–2015 into 10 CFR 431.462 and appendix B of subpart Y. UL 1081–2014 describes, among other things, the safety-related performance and construction requirements for rating dedicated-purpose pool pumps under the UL 1081 standard. Section C.3 of annex C of the NSF/ANSI 50–2015 standard describes the test methods and criteria for establishing the self-priming capability of dedicated-purpose pool pumps.

In addition, the test procedure proposed in this NOPR incorporates by reference the Hydraulic Institute (HI) 40.6–2014, ("HI 40.6–2014") "Methods for Rotodynamic Pump Efficiency Testing," (except for section 40.6.4.1, "Vertically suspended pumps"; section 40.6.4.2, "Submersible pumps"; section 40.6.5.3, "Test report"; section 40.6.5.5.2, "Speed of rotation during testing"; section 40.6.6.1, "Translation of test results to rated speed of rotation"; Appendix A, section A.7, "Testing at temperatures exceeding 30 °C (86 °F)"; and Appendix B, "Reporting of test results (normative)";) to establish procedures for measuring relevant pump performance parameters. HI 40.6–2014, with certain exceptions, is IBR approved for § 431.464, and appendix A to subpart Y of part 431. 10 CFR 431.463. DOE proposes to incorporate by reference HI 40.6–2014, with certain additional exceptions, into a new appendix B to subpart Y that would contain the DPPP test procedure. HI 40.6–2014 is an industry-accepted standard used to specify methods of testing for determining the head, flow rate, pump power input, driver power input, pump power output, and other relevant parameters necessary to determine the WEF of applicable pumps, as well as other voluntary metrics, proposed in this NOPR (see sections III.B.2 and III.F).

Additionally, these standards can be obtained from the organizations directly at the following addresses:

Hydraulic Institute, located at 6 Campus Drive, First Floor North, Parsippany, NJ, 07054, (973) 267–9700, or by visiting *www.pumps.org.*

UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or by visiting *http://ul.com.*

NEMA, 1300 North 17th Street, Suite 900, Rosslyn, VA 22209, (703) 841–3200, or by visiting *www.nema.org.*

NSF International, 789 N. Dixboro Road, Ann Arbor, MI 48105, (743) 769–8010, or by visiting *www.nsf.org.*

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the Appliance and Equipment Standards staff at (202) 586–6636 or *Appliance_Standards_Public_Meetings@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry, and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=67.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least 1 week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via regulations.gov. The *regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information commented to be confidential, and one copy of the document marked non-confidential with the information commented to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on whether all dedicated-purpose pool pumps are dry rotor.

(2) DOE requests comment on the proposed definition for "dedicated-purpose pool pump."

(3) DOE requests comment on the proposed definition of "pool filter pump."

(4) DOE requests comment on the proposed definitions of "basket strainer," "removable cartridge filter," and "sand filter."

(5) DOE requests comment on the proposed amendments to the definition of self-priming pump.

(6) DOE requests comment on the proposed definitions for "self-priming pool filter pump" and "non-self-priming pool filter pump."

(7) DOE requests comment on the proposed definition of "integral cartridge-filter pool pump" and "integral sand-filter pool pump."

(8) DOE requests comment on the proposed definition of "waterfall pump."

(9) DOE requests comment on the proposed definition of "pressure cleaner booster pump" and whether DOE should consider making ANSI/UL 1081–2014 a required label instead of illustrative in order to distinguish pressure cleaner booster pumps.

(10) DOE requests comment on the proposed definitions for "storable electric spa pump," "rigid electric spa pump," and "integral."

(11) DOE requests comment on the proposed scope of applicability of the DPPP test procedure.

(12) DOE requests comments on these proposed definitions for single-speed, two-speed, multi-speed, and variable-speed dedicated-purpose pool pump.

(13) DOE also requests comment on any additional criteria or specificity that might be required in the definitions to effectively differentiate the various speed configurations for different DPPP varieties.

(14) DOE requests comment on the proposed definition for freeze protection controls.

(15) DOE requests comment on the proposed definition of "basic model."

(16) DOE requests comment on any characteristics unique to dedicated-purpose pool pumps that may necessitate modifications to the proposed definition of "basic model."

(17) DOE requests comment on its proposal to adopt WEF as the metric to characterize the energy use of certain dedicated-purpose pool pumps and on the proposed equation for WEF.

(18) DOE requests comment on its proposal to test self-priming and non-self-priming pool filter pumps at load points specified along curve C to determine the WEF for such pumps.

(19) DOE requests comment on its proposal to test single-speed pool filter pumps at a single load point corresponding to the maximum speed for that pump on curve C.

(20) DOE requests comment on the proposed load points for two-speed pool filter pumps, as well as the minimum flow rate thresholds of 24.7 gpm for two-speed pool filter pumps that have a hydraulic output power less than or equal to 0.75 hp (small pool filter pumps) and a low flow rate of 31.1 gpm for two-speed pool filter pumps that have a hydraulic output power greater than 0.75 and less than 2.5 hp (large pool filter pumps).

(21) DOE requests comment on the load points for two-speed pool filter pumps with a low-speed setting that is higher or lower than one-half of the maximum speed setting.

(22) DOE requests comment on the availability and any examples of two-speed pool filter pumps with a low-speed setting that are not exactly one-half of the maximum speed setting.

(23) DOE requests comment on the proposal to specify the high speed and flow point for multi-speed and variable-speed pool filter pumps based on a flow rate of 80 percent of the flow rate at maximum speed on curve C and head at or above curve C.

(24) DOE requests comment on the treatment of multi-speed pumps and the necessity to throttle multi-speed pumps on the maximum speed performance curve if appropriate lower discrete operating speeds are not available to achieve 80 percent of the flow rate at maximum speed on curve C while still maintaining head at or above curve C.

(25) DOE requests comment on the proposed low flow points for small and large multi-speed and variable-speed pool filter pumps.

(26) DOE requests comment on the treatment of multi-speed pumps and proposal to test multi-speed pumps at the lowest available speed that can meet the specified flow with a head point that is at or above curve C for low-flow (Qlow) test point, similar to the high-flow (Qhigh) test point.

(27) DOE requests comment on the proposal to use a weight of 1.0 for single-speed pool filter pumps and weights of 0.20 for the high flow point and 0.80 for the low flow point for two-speed, multi-speed, and variable-speed pool filter pumps.

(28) DOE requests comment on the applicability of the two-speed, multi-speed, and variable-speed pool filter pump test methods to only those pool filter pumps that meet the proposed definitions of two-speed, multi-speed, and variable-speed dedicated-purpose pool pump.

(29) DOE requests comment on additionally limiting the applicability of the two-speed test procedure to only those two-speed self-priming pool filter

pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower and are distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has capability but is unable to operate without the presence of such a pool pump control.

(30) DOE requests comment on any additional criteria or requirements that may be necessary to ensure that the test procedure for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps is representative of their likely energy performance in the field.

(31) DOE requests comment on the proposed load point for waterfall pumps of 17.0 feet of head at the maximum speed of the pump and the proposed weight of 1.0 for the single load point.

(32) DOE requests comment on the proposed load point for pressure cleaner booster pumps of 10.0 gpm at the minimum speed that results in a head value at or above 60.0 feet and the proposed weight of 1.0 for the single load point.

(33) DOE requests comment and information regarding if this test point is achievable for all pressure cleaner booster pumps and, if not, how such pumps should be tested.

(34) DOE requests comment on the proposal to incorporate by reference HI 40.6–2014 into the proposed appendix B to subpart Y, with the exceptions, modifications, and additions listed in section III.D.2.

(35) DOE requests comment on its proposal to not incorporate by reference sections 40.6.4.1, 40.6.4.2, 40.6.5.3, 40.6.5.5.2, 40.6.6.1, A.7, and Appendix B of HI 40.6–2014 as part of the DOE test procedure for dedicated-purpose pool pumps.

(36) DOE requests comment on the proposal to clarify the applicability of sections 40.6.5.5.1, section 40.6.6.2, and section 40.6.6.3, of HI 40.6–2014.

(37) DOE requests comment on its proposal to clarify the calculation of pump hydraulic horsepower to reference a unit conversion of 3,956 instead of 3,960.

(38) DOE requests comment on the proposal to specify that at least two unique data points must be used to determine stabilization and to allow damping devices, as described in section 40.6.3.2.2, but with integration limited to less than or equal to the data collection interval.

(39) DOE requests comment on its proposal to require that the tested flow rate at each load point must be within ±2.5 percent of the flow rate at the specified load point self-priming pool filter pumps, non-self-priming pool filter pumps, and pressure cleaner booster pumps.

(40) DOE requests comment on its proposal to require that the tested head point at each load point must be within ±2.5 percent of the head point at the specified load point for waterfall pumps.

(41) DOE requests comments on the proposed voltage, frequency, voltage unbalance, and total harmonic distortion requirements that would have to be satisfied when performing the DPPP test procedure for dedicated-purpose pool pumps.

(42) Specifically, DOE requests comments on whether these tolerances can be achieved in existing DPPP test laboratories, or whether specialized power supplies or power conditioning equipment would be required.

(43) DOE requests comment on its proposal to require measurement of the input power to the dedicated-purpose pool pump using electrical measurement equipment capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency and having an accuracy level of ±2.0 percent of full scale when measured at the fundamental supply source frequency.

(44) DOE requests comment on the proposal to require instruments for measuring distance that are accurate to and have a resolution of at least ±0.1 inch.

(45) DOE requests comment on the proposal to use raw measured data to calculate WEF as well as the proposal to round WEF to the nearest 0.1 kgal/kWh.

(46) DOE requests comment on the proposal to use rated hydraulic horsepower as the primary standardized metric to describe DPPP "size" with regard to specifying the test procedure and energy conservation standards for dedicated-purpose pool pumps.

(47) DOE requests comment on the proposal to determine the representative value of rated hydraulic horsepower as the mean of the measured rated hydraulic horsepower values for each tested unit.

(48) DOE requests comment on the proposed definitions and testing methods for "dedicated-purpose pool pump nominal motor horsepower," "dedicated-purpose pool pump service factor," and "dedicated-purpose pool pump motor total horsepower."

(49) DOE seeks comment on whether the proposed test methods are applicable to all motors distributed in commerce with applicable dedicated-purpose pool pumps. If not, DOE requests additional information regarding the characteristics of any motors for which these procedures would not be applicable and any suggestions regarding alternative procedures to determine dedicated-purpose pool pump nominal motor horsepower, dedicated-purpose pool pump service factor, and dedicated-purpose pool pump motor total horsepower.

(50) DOE requests comment on the proposal to incorporate by reference the test method contained in section C.3 of NSF/ANSI 50 2015, with the minor modifications and additions summarized in Table III.20, to measure the self-priming capability of pool filter pumps.

(51) DOE requests comment on the proposed method for determining the maximum head of pool filter pumps when differentiating waterfall pumps from other pool filter pump varieties.

(52) DOE requests comment on its proposal to adopt optional provisions for the measurement of several other DPPP metrics, including EF, pump efficiency, overall (wire-to-water) efficiency, driver power input, and/or pump power output (hydraulic horsepower), in addition to the required representations.

(53) DOE requests comment on its belief that HI 40.6–2014 contains all the necessary methods to determine pump efficiency, overall (wire-to-water) efficiency, driver power input, and/or pump power output (hydraulic horsepower) and further specification is not necessary.

(54) DOE requests comment on the proposed optional test procedure to determine EF on the specific reference curves A, B, C, and D at any available operating speed.

(55) DOE requests comment on the proposed labeling requirements for dedicated-purpose pool pumps.

(56) DOE requests comment on any other information that should be included on the permanent nameplate or in manufacturer literature to aid customers of dedicated-purpose pool pumps in proper selection and application of DPPP units.

(57) DOE requests comment on the proposed optional test procedure for replacement DPPP motors. Specifically, DOE seeks comment as to any additional details that should be addressed in testing a replacement DPPP motor with any given DPPP bare

pump to determine applicable WEF values.

(58) DOE requests comment on the proposed statistical sampling procedures and certification requirements for dedicated-purpose pool pumps.

(59) DOE requests comment on the proposed mandatory and optional reporting requirements for certification of dedicated-purpose pool pumps.

(60) DOE requests comment on the proposed enforcement provisions for dedicated-purpose pool pumps. Specifically, DOE seeks comment upon the applicability of a 5 percent tolerance on rated hydraulic horsepower, maximum head, vertical lift, and true priming time for each tested DPPP model or if a higher or lower percentage variation would be justified.

(61) DOE requests comment on the proposed verification procedure for DPPP freeze protection controls.

(62) DOE requests comment on the capital cost burden associated with the proposed test procedure, including the estimated capabilities of current manufacturers.

(63) DOE requests comment on the estimate that the likely capital cost burden incurred by existing DPPP manufacturers would be between $0 and $15,000.

(64) DOE requests comment on the estimated time to complete a test of a single DPPP unit under the proposed test procedure.

(65) DOE requests comment regarding the size of DPPP manufacturing entities and the number of manufacturing businesses represented by this market.

(66) DOE requests comment on its assertion that manufacturers typically introduce or significantly modify basic models once every 5 years.

(67) DOE requests comment on the testing currently conducted by DPPP manufacturers, including the magnitude of incremental changes necessary to transform current test facilities to conduct the DOE test procedure as proposed in this NOPR.

(68) DOE requests comment on the tentative conclusion that the proposed test procedure will not have a significant economic impact on a substantial number of small entities.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 25, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 431 of chapter II, subchapter D of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.59 is amended by:
■ a. Revising paragraph (a)(1)(ii); and
■ b. Adding paragraphs (a)(2), (b)(2)(iv) and (v), and (b)(3)(iv).

The revision and additions read as follows:

§ 429.59 Pumps.

(a) * * *

(1) * * *

(ii) Any representation of weighted energy factor or other measure of energy efficiency of a basic model must be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the maximum of the i^{th} sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A of this subpart).

(2) *Other representations*—(i) *Rated hydraulic horsepower.* The representative value of rated hydraulic horsepower of a basic model of dedicated-purpose pool pump must be the mean of the rated hydraulic horsepower for each tested unit.

(ii) *Dedicated-purpose pool pump nominal motor horsepower.* The representative value of dedicated-purpose pool pump nominal motor horsepower of a basic model of dedicated-purpose pool pump must be determined based on the mean of the breakdown torque, locked-rotor torque, pull-up torque, locked-rotor current, slip, speed and/or voltage (as applicable) for each tested unit. The tested sample of dedicated-purpose pool pump motor units and the tested sample of dedicated-purpose pool pump units do not have to be the same units, provided they are representative of the same population.

(iii) *Dedicated-purpose pool pump motor total horsepower.* The representative value of dedicated-purpose pool pump motor total horsepower of a basic model of dedicated-purpose pool pump must be determined based on the representative values of dedicated-purpose pool pump service factor and dedicated-purpose pool pump nominal motor horsepower.

(iv) *Dedicated-purpose pool pump service factor.* The representative value of dedicated-purpose pool pump service factor of a basic model of dedicated-purpose pool pump must be determined based on the representative value of dedicated-purpose pool pump nominal motor horsepower.

(v) *True power factor.* The representative value of true power factor of a basic model of dedicated-purpose pool pump must be determined based on the mean of the true power factors for each tested unit of dedicated-purpose pool pump motor.

(b) * * *

(2) * * *

(iv) For a dedicated-purpose pool pump subject to the test methods prescribed in appendix B to subpart Y of part 431 of this chapter: Weighted energy factor (WEF) in kilogallons per kilowatt-hour (kgal/kWh); rated hydraulic horsepower in horsepower (hp); the speed configuration for which the pump is being rated (*i.e.,* single-speed, two-speed, multi-speed, or variable-speed); true power factor at all applicable test procedure load points, as specified in Table 1 of appendix B to subpart Y of part 431; dedicated-purpose pool pump nominal motor horsepower in horsepower (hp);

dedicated-purpose pool pump motor total horsepower in horsepower (hp); dedicated-purpose pool pump service factor (dimensionless); for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps: the maximum head (in feet), and a statement regarding if freeze protection is shipped enabled or disabled; for dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled: The default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm); and, for self-priming and non-self-priming pool filter pumps: The vertical lift (in feet) and true priming time (in minutes) for the DPPP model and a statement regarding whether the pump is certified with NSF/ANSI 50–2015.

(v) For integral cartridge-filter and sand-filter pool pumps, the maximum run-time (in hours) of the pool pump control with which the integral cartridge-filter or sand-filter pump is distributed in commerce.

(3) * * *

(iv) For a dedicated-purpose pool pump subject to the test methods prescribed in appendix B to subpart Y of part 431 of this chapter: calculated driver power input and flow rate at each load point i (P_i and Q_i), in horsepower (hp) and gallons per minute (gpm), respectively; and/or energy factor ($EF_{X,s}$) at any desired speed s on any of the optional system curves specified in Table 4 of this appendix A, along with the tested speed s in rpm and the system curve letter (*i.e.,* A, B, C, or D) associated with each EF value.

* * * * *

■ 3. Section 429.110 is amended by revising paragraphs (e)(1) and (5) to read as follows:

§ 429.110 Enforcement testing.

* * * * *

(e) * * *

(1) For products with applicable energy conservation standard(s) in § 430.32 of this chapter, and commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, commercial clothes washers, dedicated-purpose pool pumps, and metal halide lamp ballasts, DOE will use a sample size of not more than 21 units and follow the sampling plans in appendix A of this subpart (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment).

* * * * *

(5) For pumps subject to the standards specified in § 431.465(a) of this chapter, DOE will use an initial sample size of not more than four units and will determine compliance based on the arithmetic mean of the sample.

* * * * *

■ 4. Section 429.134 is amended by revising paragraph (i) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(i) *Pumps*—(1) *General purpose pumps.* (i) The volume rate of flow (flow rate) at BEP and nominal speed of rotation of each tested unit of the basic model will be measured pursuant to the test requirements of § 431.464 of this chapter, where the value of volume rate of flow (flow rate) at BEP and nominal speed of rotation certified by the manufacturer will be treated as the expected BEP flow rate. The results of the measurement(s) will be compared to the value of volume rate of flow (flow rate) at BEP and nominal speed of rotation certified by the manufacturer. The certified volume rate of flow (flow rate) at BEP and nominal speed of rotation will be considered valid only if the measurement(s) (either the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation for a single unit sample or the average of the measured flow rates for a multiple unit sample) is within five percent of the certified volume rate of flow (flow rate) at BEP and nominal speed of rotation.

(A) If the representative value of volume rate of flow (flow rate) at BEP and nominal speed of rotation is found to be valid, the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation will be used in subsequent calculations of constant load pump energy rating (PER_{CL}) and constant load pump energy index (PEI_{CL}) or variable load pump energy rating (PER_{VL}) and variable load pump energy index (PEI_{VL}) for that basic model.

(B) If the representative value of volume rate of flow (flow rate) at BEP and nominal speed of rotation is found to be invalid, the mean of all the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation values determined from the tested unit(s) will serve as the new expected BEP flow rate and the unit(s) will be retested until such time as the measured rate of flow (flow rate) at BEP and nominal speed of rotation is within 5 percent of the expected BEP flow rate.

(ii) DOE will test each pump unit according to the test method specified by the manufacturer in the certification report submitted pursuant to § 429.59(b).

(2) *Dedicated-purpose pool pumps.* (i) The rated hydraulic horsepower of each tested unit of the basic model of dedicated-purpose pool pump will be measured pursuant to the test requirements of § 431.464(b) of this chapter and the result of the measurement(s) will be compared to the value of rated hydraulic horsepower certified by the manufacturer. The certified rated hydraulic horsepower will be considered valid only if the measurement(s) (either the measured rated hydraulic horsepower for a single unit sample or the average of the measured rated hydraulic horsepower values for a multiple unit sample) is within 5 percent of the certified rated hydraulic horsepower.

(A) If the representative value of rated hydraulic horsepower is found to be valid, the value of rated hydraulic horsepower certified by the manufacturer will be used to determine the standard level for that basic model.

(B) If the representative value of rated hydraulic horsepower is found to be invalid, the mean of all the measured rated hydraulic horsepower values determined from the tested unit(s) will be used to determine the standard level for that basic model.

(ii) To verify the self-priming capability of non-self-priming pool filter pumps and of self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015, the vertical lift and true priming time of each tested unit of the basic model of self-priming or non-self-priming pool filter pump will be measured pursuant to the test requirements of § 431.464(b) of this chapter and the result of the measurement(s) will be compared to the values of vertical lift and true priming time certified by the manufacturer. The certified values of vertical lift and true priming time will be considered valid only if the measurement(s) (either the measured vertical lift and true priming time for a single unit sample or the average of vertical lift and true priming time values, respectively, for a multiple unit sample) is within 5 percent of the certified values of vertical lift and true priming time.

(A) If the representative values of vertical lift and true priming time are found to be valid, the values of vertical lift and true priming time certified by the manufacturer will be used to determine the appropriate equipment class and standard level for that basic model.

(B) If the representative values of vertical lift or true priming time are found to be invalid, the mean of the values of vertical lift and true priming time determined from the tested unit(s) will be used to determine the appropriate equipment class standard level for that basic model.

(iii) To verify the maximum head of self-priming pool filter pump, non-self-priming pool filter pumps, and waterfall pumps, the maximum head of each tested unit of the basic model of self-priming pool filter pump, non-self-priming pool filter pump, or waterfall pump will be measured pursuant to the test requirements of § 431.464(b) of this chapter and the result of the measurement(s) will be compared to the value of maximum head certified by the manufacturer. The certified value of maximum head will be considered valid only if the measurement(s) (either the measured maximum head for a single unit sample or the average of the maximum head values for a multiple unit sample) is within 5 percent of the certified values of maximum head.

(A) If the representative value of maximum head is found to be valid, the value of maximum head certified by the manufacturer will be used to determine the appropriate equipment class and standard level for that basic model.

(B) If the representative value of maximum head is found to be invalid, the measured value(s) of maximum head determined from the tested unit(s) will be used to determine the appropriate equipment class standard level for that basic model.

(iv) To verify that a DPPP model complies with the applicable freeze protection control design requirements, the initiation temperature, run-time, and speed of rotation of the default control configuration of each tested unit of the basic model of dedicated-purpose pool pump will be evaluated according to the procedure specified in paragraph (i)(2)(iv)(A) of this section:

(A) *DPPP freeze protection control test method.* (*1*) Set up and configure the dedicated-purpose pool pump under test according to the manufacturer instructions, including any necessary initial priming, in a test apparatus as described in appendix A of HI 40.6–2014 (Incorporated by reference, see § 431.463), except that the ambient temperature registered by the freeze protection ambient temperature sensor will be able to be controlled by, for example, exposing the freeze protection temperature sensor to a specific temperature by submerging the sensor in a water bath of known temperature, adjusting the actual ambient air temperature of the test chamber, or other means that allows the ambient temperature registered by the freeze protection temperature sensor to be reliably simulated and varied.

(*2*) Activate power to the pump with the flow rate set to zero (*i.e.,* the pump is energized but not circulating water). Set the ambient temperature to 42 ± 0.5 °F and allow the temperature to stabilize, where stability is determined in accordance with section 40.6.3.2.2 of HI 40.6–2014 (Incorporated by reference, see § 431.463). After 5 minutes, decrease the temperature measured by the freeze protection temperature control 1 ± 0.5 °F and allow the temperature to stabilize. Record the freeze protection ambient temperature reading, where the "freeze protection ambient temperature reading" is representative of the temperature measured by the freeze protection ambient temperature sensor, which may be recorded by a variety of means depending on how the temperature is being simulated and controlled, and DPPP rotating speed, if any, after each reduction in temperature and subsequent stabilization. If no flow is initiated, record zero or no flow. Continue decreasing the temperature measured by the freeze protection temperature control 1 ± 0.5 °F after 5.0 minutes of stable operation at the previous temperature reading until the pump freeze protection initiates water circulation or until the ambient temperature of 38 ± 0.5 °F has been evaluated (*i.e.,* the end of the 5 minute interval of 38 °F), whichever occurs first.

(*3*) If and when the DPPP freeze protection controls initiate water circulation, increase the ambient temperature reading registered by the freeze protection temperature sensor to a temperature of 42 ± 0.5 °F and maintain that temperature for at least 30.0 minutes. Do not modify or interfere with the operation of the DPPP freeze protection operating cycle. After at least 30.0 minutes, record the freeze protection ambient temperature and rotating speed, if any, of the dedicated-purpose pool pump under test.

(B) If the dedicated-purpose pool pump initiates water circulation at a temperature greater than 40.0 °F; if the dedicated-purpose pool pump was still circulating water after 30.0 minutes of operation at 42.0 ± 0.5 °F; or if rotating speed measured at any point during the DPPP freeze protection control test in paragraph (i)(2)(iii)(A) of this section was greater than one-half of the maximum rotating speed of the DPPP model certified by the manufacturer, that DPPP model is deemed to not comply with the design requirement for freeze protection controls.

(C) If none of the conditions specified in paragraph (i)(2)(iv)(B) of this section and § 431.134 of this chapter are met, including if the DPPP freeze protection control does not initiate water circulation at all during the test, the dedicated-purpose pool pump under test is deemed compliant with the design requirement for freeze protection controls.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Section 431.462 is amended by:

■ a. Adding, in alphabetical order, definitions for the terms "Basket strainer," "Dedicated-purpose pool pump," "Dedicated-purpose pool pump motor total horsepower," "Dedicated-purpose pool pump nominal motor horsepower," "Dedicated-purpose pool pump service factor," "Designed and marketed," "Freeze protection control," "Integral," "Integral cartridge-filter pool pump," "Integral sand-filter pool pump," "Multi-speed dedicated-purpose pool pump," "Non-self-priming pool filter pump," "Pool filter pump," "Pressure cleaner booster pump," "Removable cartridge filter," "Rigid electric spa pump," "Sand filter," "Self-priming pool filter pump," "Single-speed dedicated-purpose pool pump," "Storable electric spa pump," "Submersible pump," "Two-speed dedicated-purpose pool pump," "Variable-speed dedicated-purpose pool pump," "Variable speed drive," "Waterfall pump;" and

■ b. Revising the introductory text and the definitions for "Basic model" and "Self-priming pump."

The additions and revisions read as follows:

§ 431.462 Definitions.

The following definitions are applicable to this subpart, including appendices A and B. In cases where there is a conflict, the language of the definitions adopted in this section takes precedence over any descriptions or definitions found in the 2008 version of ANSI/HI Standard 1.1–1.2, "Rotodynamic (Centrifugal) Pumps For Nomenclature And Definitions" (ANSI/HI 1.1–1.2–2008), or the 2008 version of ANSI/HI Standard 2.1–2.2, "Rotodynamic (Vertical) Pumps For Nomenclature And Definitions" (ANSI/HI 2.1–2.2–2008). In cases where definitions reference design intent, DOE will consider marketing materials, labels and certifications, and equipment design to determine design intent.

* * * * *

Basic model means all units of a given class of pump manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; and, in addition, for pumps that are subject to the standards specified in § 431.465(b), the following provisions also apply:

(1) All variations in numbers of stages of bare RSV and ST pumps must be considered a single basic model;

(2) Pump models for which the bare pump differs in impeller diameter, or impeller trim, may be considered a single basic model; and

(3) Pump models for which the bare pump differs in number of stages or impeller diameter and which are sold with motors (or motors and controls) of varying horsepower may only be considered a single basic model if:

(i) For ESCC, ESFM, IL, and RSV pumps, each motor offered in the basic model has a nominal full load motor efficiency rated at the Federal minimum (see the current table for NEMA Design B motors at § 431.25) or the same number of bands above the Federal minimum for each respective motor horsepower (see Table 3 of appendix A to subpart Y of this part); or

(ii) For ST pumps, each motor offered in the basic model has a full load motor efficiency at the default nominal full load submersible motor efficiency shown in Table 2 of appendix A to subpart Y of this part or the same number of bands above the default nominal full load submersible motor efficiency for each respective motor horsepower (see Table 3 of appendix A to subpart Y of this part).

Basket strainer means a perforated or otherwise porous receptacle, mounted within a housing on the suction side of a pump, that prevents solid debris from entering a pump. The basket strainer receptacle is capable of passing spherical solids of 1 mm in diameter, and can be removed by hand or using only simple tools (*e.g.*, screwdriver, pliers, open-ended wrench).

* * * * *

Dedicated-purpose pool pump comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps, integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps.

Dedicated-purpose pool pump motor total horsepower means the product of the rated horsepower and the service factor of a motor used on a dedicated-purpose pool pump (also known as service factor horsepower) based on the maximum continuous duty motor power output rating allowable for nameplate ambient rating and motor insulation class.

Dedicated-purpose pool pump nominal motor horsepower means the nominal motor horsepower as determined in accordance with the applicable procedures in NEMA–MG–1 2014 (incorporated by reference, see § 431.463).

Dedicated-purpose pool pump service factor means a multiplier applied to the rated horsepower of a pump motor to indicate the percent above nameplate horsepower at which the motor can operate continuously without exceeding its allowable insulation class temperature limit.

Designed and marketed means that the equipment is specifically designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed for that application, with the designation on the packaging and all publicly available documents (*e.g.*, product literature, catalogs, and packaging labels).

* * * * *

Freeze protection control means a pool pump control that, at a certain ambient temperature, turns on the dedicated-purpose pool pump to circulate water for a period of time to prevent the pool and water in plumbing from freezing.

* * * * *

Integral means a part of the device that cannot be removed without compromising the device's function or destroying the physical integrity of the unit.

Integral cartridge-filter pool pump means a pump that requires a removable cartridge filter, installed on the suction side of the pump, for operation; and the cartridge filter cannot be bypassed.

Integral sand-filter pool pump means a pump distributed in commerce with a sand filter that cannot be bypassed.

* * * * *

Multi-speed dedicated-purpose pool pump means a dedicated-purpose pool pump that is capable of operating at more than two discrete, pre-determined operating speeds separated by speed increments greater than 100 rpm, where the lowest speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce with an on-board pool pump control (*i.e.*, variable speed drive and user interface or programmable switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times.

* * * * *

Non-self-priming pool filter pump means a pool filter pump that is not certified under NSF/ANSI 50–2015 to be self-priming and is not capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time less than or equal to 10.0 minutes, when tested in accordance with NSF/ANSI 50–2015, and is not a waterfall pump.

Pool filter pump means an end suction pump that:

(1) Either:

(i) Includes an integrated basket strainer; or

(ii) Does not include an integrated basket strainer, but requires a basket strainer for operation, as stated in manufacturer literature provided with the pump; and

(2) May be distributed in commerce connected to, or packaged with, a sand filter, removable cartridge filter, or other filtration accessory, so long as the filtration accessory are connected with consumer-removable connections that allow the filtration accessory to be bypassed.

Pressure cleaner booster pump means an end suction, dry rotor pump designed and marketed for pressure-side pool cleaner applications, and which may be UL listed under ANSI/UL 1081–2014, "Standard for Swimming Pool Pumps, Filters, and Chlorinators."

* * * * *

Removable cartridge filter means a filter component with fixed dimensions that captures and removes suspended particles from water flowing through the unit. The removable cartridge filter is not capable of passing spherical solids of 1 mm in diameter or greater, and can be removed from the filter housing by hand or using only simple tools (*e.g.*, screwdrivers, pliers, open-ended wrench).

Rigid electric spa pump means an end suction pump that does not contain an integrated basket strainer or require a basket strainer for operation as stated in manufacturer literature provided with the pump and that meets the following three criteria:

(1) Is assembled with four through bolts that hold the motor rear endplate, rear bearing, rotor, front bearing, front endplate, and the bare pump together as an integral unit;

(2) Is constructed with buttress threads at the inlet and discharge of the bare pump; and

(3) Uses a casing or volute and connections constructed of a non-metallic material.

* * * * *

Sand filter means a device designed to filter water through sand or an alternate sand-type media.

Self-priming pool filter pump means a pool filter pump that is certified under NSF/ANSI 50–2015 to be self-priming or is capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time less than or equal to 10.0 minutes, when tested in accordance with NSF/ANSI 50–2015, and is not a waterfall pump.

Self-priming pump means a pump that either is a self-priming pool filter pump or a pump that:

(1) Is designed to lift liquid that originates below the centerline of the pump inlet;

(2) Contains at least one internal recirculation passage; and

(3) Requires a manual filling of the pump casing prior to initial start-up, but is able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve.

* * * * *

Single-speed dedicated-purpose pool pump means a dedicated-purpose pool pump that is capable of operating at only one speed.

Storable electric spa pump means a pump that is distributed in commerce with one or more of the following:

(1) An integral heater; and

(2) An integral air pump.

Submersible pump means a pump that is designed to be operated with the motor and bare pump fully submerged in the pumped liquid.

* * * * *

Two-speed dedicated-purpose pool pump means a dedicated purpose pool pump that is capable of operating at only two different pre-determined operating speeds, where the low operating speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce either:

(1) With a pool pump control (*i.e.*, variable speed drive and user interface or switch) that is capable of changing the speed in response to user preferences; or

(2) Without a pool pump control that has the capability to change speed in response to user preferences, but without which the pump is unable to operate without the presence of such a pool pump control.

Variable-speed dedicated-purpose pool pump means a dedicated-purpose pool pump that is capable of operating at a variety of user-determined speeds, where all the speeds are separated by at most 100 rpm increments over the operating range and the lowest operating speed is less than or equal to one-third of the maximum operating speed and greater than zero. Such a pump must include a variable speed drive and be distributed in commerce either:

(1) With a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times; or

(2) Without a user interface but be unable to operate without the presence of a user interface.

Variable speed drive means equipment capable of varying the speed of the motor.

Waterfall pump means a pool filter pump with maximum head less than or equal to 30 feet, and a maximum speed less than or equal to 1,800 rpm.

■ 7. Section 431.463 is amended by:
■ a. Revising paragraph (a);
■ b. Adding paragraph (c)(4);
■ c. Revising paragraph (e); and,
■ d. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

§ 431.463 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following standards into subpart Y of this part. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval, and notification of any change in the material will be published in the **Federal Register**. All approved material can be obtained from the sources listed below and is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards.* It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

(c) * * *

(4) HI 40.6–2014, (''HI 40.6–2014''), ''Methods for Rotodynamic Pump Efficiency Testing,'' copyright 2014, IBR approved for § 429.59, § 429.134 and appendix B to subpart Y of this part, except sections 40.6.4.1, ''Vertically suspended pumps''; 40.6.4.2, ''Submersible pumps''; 40.6.5.3, ''Test report''; 40.6.5.5.2, ''Speed of rotation during test''; 40.6.6.1, ''Translation of test results to rated speed of rotation''; Appendix A, section A.7, ''Testing at temperatures exceeding 30 °C (86 °F)''; and Appendix B, ''Reporting of test results (normative).''

* * * * *

(e) *NEMA.* National Electrical Manufacturers Association. 1300 North 17th Street, Suite 900, Rosslyn, VA 22209, (703) 841–3200. *www.nema.org.*

(1) NEMA MG–1–2014, (''NEMA MG–1–2014''), ''Motors and Generators,'' 2014, IBR approved for § 431.462 and appendix B of this part, as follows:

(i) Section 1.19, ''Polyphase Motors'';

(ii) Section 10.34, ''Basis of Horsepower Rating'';

(iii) Section 10.62, ''Horsepower, Speed, and Voltage Ratings'';

(iv) Section 12.30, ''Test Methods'';

(v) Section 12.35, ''Locked-Rotor Current of 3-Phase 60-Hz Small and Medium Squirrel-Cage Induction Motors Rated at 230 Volts'';

(vi) Section 12.37, ''Torque Characteristics of Polyphase Small Motors'';

(vii) Section 12.38, ''Locked-Rotor Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings'';

(viii) Section 12.39, ''Breakdown Torque of Single-speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings'';

(ix) Section 12.40, ''Pull-Up Torque of Single-Speed Polyphase Squirrel-Cage Medium Motors with Continuous Ratings.''

(2) [Reserved]

(f) *NSF.* NSF International. 789 N. Dixboro Road, Ann Arbor, MI 48105, (743) 769–8010. *www.nsf.org.*

(1) NSF/ANSI Standard 50–2015, (''NSF/ANSI 50–2015''), ''Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,'' ANSI approved January 26, 2015, Annex C—''Test methods for the evaluation of centrifugal pumps,'' Section C.3, ''self-priming capability.'' IBR approved for § 431.462 and appendix B of this part.

(2) [Reserved]

(g) *UL.* UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800. *www.ul.com.*

(1) UL 448, (''ANSI/UL 448–2013''), ''Standard for Safety Centrifugal

Stationary Pumps for Fire-Protection Service," 10th Edition, June 8, 2007, including revisions through July 12, 2013, IBR approved for § 431.462.

(2) UL 1081, ("ANSI/UL 1081–2014"), "Standard for Swimming Pool Pumps, Filters, and Chlorinators," 6th Edition, January 29, 2008, including revisions through March 18, 2014, IBR approved for § 431.462.

■ 8. Section 431.464 is revised to read as follows:

§ 431.464 Test procedure for the measurement of energy efficiency, energy consumption, and other performance factors of pumps.

(a) *General pumps*—(1) *Scope.* This paragraph (a) provides the test procedures for determining the constant and variable load pump energy index for:

(i) The following categories of clean water pumps:

(A) End suction close-coupled (ESCC);

(B) End suction frame mounted/own bearings (ESFM);

(C) In-line (IL);

(D) Radially split, multi-stage, vertical, in-line casing diffuser (RSV); and

(E) Submersible turbine (ST) pumps.

(ii) With the following characteristics:

(A) Flow rate of 25 gpm or greater at BEP and full impeller diameter;

(B) Maximum head of 459 feet at BEP and full impeller diameter and the number of stages required for testing (see section 1.2.2 of appendix A of this subpart);

(C) Design temperature ranges from 14 to 248 °F;

(D) Designed to operate with either:

(*1*) A 2- or 4-pole induction motor; or

(*2*) A non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute (rpm) and/or 1,440 and 2,160 rpm, and in either case, the driver and impeller must rotate at the same speed;

(E) For ST pumps, a 6-inch or smaller bowl diameter; and

(F) For ESCC and ESFM pumps, a specific speed less than or equal to 5,000 when calculated using U.S. customary units.

(iii) Except for the following pumps:

(A) Fire pumps;

(B) Self-priming pumps;

(C) Prime-assist pumps;

(D) Magnet driven pumps;

(E) Pumps designed to be used in a nuclear facility subject to 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities"; and

(F) Pumps meeting the design and construction requirements set forth in Military Specifications: MIL–P–17639F, "Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use" (as amended); MIL–P–17881D, "Pumps, Centrifugal, Boiler Feed, (Multi-Stage)" (as amended); MIL–P–17840C, "Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship Application)" (as amended); MIL–P–18682D, "Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard" (as amended); and MIL–P–18472G, "Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant" (as amended). Military specifications and standards are available for review at *http://everyspec.com/MIL-SPECS.*

(2) *Testing and calculations.* Determine the applicable constant load pump energy index (PEI_{CL}) or variable load pump energy index (PEI_{VL}) using the test procedure set forth in appendix A of this subpart.

(b) *Dedicated-purpose pool pumps*—(1) *Scope.* This paragraph (b) provides the test procedures for determining the weighted energy factor, rated hydraulic horsepower, dedicated-purpose pool pump nominal motor horsepower, dedicated-purpose pool pump motor total horsepower, dedicated-purpose pool pump service factor, and other pump performance parameters for:

(i) The following varieties of dedicated-purpose pool pumps:

(A) Self-priming pool filter pumps;

(B) Non-self-priming pool filter pumps;

(C) Waterfall pumps; and

(D) Pressure cleaner booster pumps;

(ii) Served by single-phase or polyphase input power;

(iii) Except for:

(A) Submersible pumps; and

(B) Self-priming and non-self-priming pool filter pumps with hydraulic output power greater than or equal to 2.5 horsepower.

(2) *Testing and calculations.* Determine the weighted energy factor (WEF) using the test procedure set forth in appendix B of this subpart.

■ 9. Section 431.466 is revised to read as follows:

§ 431.466 Pumps labeling requirements.

(a) *General pumps.* For the pumps described in paragraph (a) of § 431.464, the following requirements apply to units manufactured on the same date that compliance is required with any applicable standards prescribed in § 431.465.

(1) *Pump nameplate*—(i) *Required information.* The permanent nameplate must be marked clearly with the following information:

(A) For bare pumps and pumps sold with electric motors but not continuous or non-continuous controls, the rated pump energy index—constant load (PEI_{CL}), and for pumps sold with motors and continuous or non-continuous controls, the rated pump energy index—variable load (PEI_{VL});

(B) The bare pump model number; and

(C) If transferred directly to an end-user, the unit's impeller diameter, as distributed in commerce. Otherwise, a space must be provided for the impeller diameter to be filled in.

(ii) *Display of required information.* All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump's permanent nameplate. The PEI_{CL} or PEI_{VL}, as appropriate to a given pump model, must be identified in the form "PEI_{CL} ____" or "PEI_{VL} ____." The model number must be in one of the following forms: "Model ____" or "Model number ____" or "Model No. ____." The unit's impeller diameter must be in the form "Imp. Dia. ____; (in.)."

(2) *Disclosure of efficiency information in marketing materials.* (i) The same information that must appear on a pump's permanent nameplate pursuant to paragraph (a)(1)(i) of this section, must also be prominently displayed:

(A) On each page of a catalog that lists the pump; and

(B) In other materials used to market the pump.

(ii) [Reserved]

(b) *Dedicated-purpose pool pumps.* For the pumps described in paragraph (b) of § 431.464, the following requirements apply on the same date that compliance is required with any applicable standards prescribed in § 431.465.

(1) *Pump nameplate*—(i) *Required information.* The permanent nameplate of a dedicated-purpose pool pump described in paragraph (b) of § 431.464 must be marked clearly with the following information:

(A) The weighted energy factor (WEF);

(B) The rated hydraulic horsepower;

(C) The dedicated-purpose pool pump nominal motor horsepower;

(D) The dedicated-purpose pool pump service factor; and

(E) The dedicated-purpose pool pump motor total horsepower.

(ii) *Display of required information.* All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump's permanent nameplate. In all instances, horsepower may be abbreviated as "hp."

(A) The WEF, as appropriate to a given pump model, must be identified in the form "WEF ____."

(B) The rated hydraulic horsepower must be identified in the form "rated hydraulic horsepower ____."

(C) The dedicated-purpose pool pump nominal motor horsepower must be identified in one of the following forms: "dedicated-purpose pool pump nominal motor horsepower ____," "DPPP nominal motor horsepower ____," or "nominal motor horsepower ____."

(D) The dedicated-purpose pool pump service factor must be identified in one of the following forms: "DPPP service factor ____," "service factor ____," or "SF ____."

(E) The dedicated-purpose pool pump motor total horsepower must be identified in one of the following forms: "dedicated-purpose pool pump motor total horsepower ____," "DPPP motor total horsepower ____," or "motor total horsepower ____."

(2) [Reserved]

Appendix A to Subpart Y of Part 431 [Amended]

■ 10. In the introductory note to appendix A of subpart Y of part 431, remove the reference "10 CFR 431.464" add in its place "10 CFR 431.464(a)".

■ 11. Add appendix B to subpart Y of part 431 to read as follows:

Appendix B to Subpart Y of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Dedicated-Purpose Pool Pumps

Note: Starting on [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], any representations made with respect to the energy use or efficiency of dedicated-purpose pool pumps subject to testing pursuant to 10 CFR 431.464(b) must be made in accordance with the results of testing pursuant to this appendix.

I. Test Procedure for Dedicated-Purpose Pool Pumps

A. General

A.1 Test Method. To determine the weighted energy factor (WEF) for dedicated-purpose pool pumps, perform "wire-to-water" testing in accordance with HI 40.6–2014, except section 40.6.4.1, "Vertically suspended pumps"; section 40.6.4.2, "Submersible pumps"; section 40.6.5.3, "Test report"; section 40.6.5.5.2, "Speed of rotation during testing"; section 40.6.6.1, "Translation of test results to rated speed of rotation"; section 40.6.6.2, "Pump efficiency"; section 40.6.6.3, "Performance curve"; section A.7, "Testing at temperatures exceeding 30 °C (86 °F)"; and appendix B, "Reporting of test results"; (incorporated by reference, see § 431.463) with the modifications and additions as noted throughout the provisions below. Do not use the test points specified in section 40.6.5.5.1, "Test procedure" of HI 40.6–2014 and instead use those test points specified in section D.3 of this appendix for the applicable dedicated-purpose pool pump variety and speed configuration. When determining overall efficiency, best efficiency point, or other applicable pump energy performance information, section 40.6.5.5.1, "Test procedure"; section 40.6.6.2, "Pump efficiency"; and section 40.6.6.3, "Performance curve" must be used, as applicable. For the purposes of applying this appendix, the term "volume per unit time," as defined in section 40.6.2, "Terms and definitions," of HI 40.6–2014 shall be deemed to be synonymous with the term "flow rate" used throughout that standard and this appendix.

A.2. Calculations and Rounding. All terms and quantities refer to values determined in accordance with the procedures set forth in this appendix for the rated pump. Perform all calculations using raw measured values without rounding. Round WEF, EF, maximum head, vertical lift, and true priming time values to the tenths place (*i.e.,* 0.1). Round all other reported values to the hundredths place.

B. Measurement Equipment

B.1 For the purposes of measuring flow rate, speed of rotation, temperature, and pump power output, the equipment specified in HI 40.6–2014 Appendix C (incorporated by reference, see § 431.463) necessary to measure head, speed of rotation, flow rate, and temperature must be used and must comply with the stated accuracy requirements in HI 40.6–2014 Table 40.6.3.2.3, except as specified in section B.1.1 and B.1.2 of this appendix. When more than one instrument is used to measure a given parameter, the combined accuracy, calculated as the root sum of squares of individual instrument accuracies, must meet the specified accuracy requirements.

B.1.1 Electrical measurement equipment for determining the driver power input to the motor or controls must be capable of measuring true root mean squared (RMS) current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency, and have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency.

B.1.2 Instruments for measuring distance (*e.g.,* height above the reference plane or water level) must be accurate to and have a resolution of at least ±0.1 inch.

C. Test Conditions and Tolerances

C.1 Pump Specifications. Conduct testing at full impeller diameter in accordance with the test conditions, stabilization requirements, and specifications of HI 40.6–2014 (incorporated by reference, see § 431.463) section 40.6.3, "Pump efficiency testing"; section 40.6.4, "Considerations when determining the efficiency of a pump"; section 40.6.5.4 (including appendix A), "Test arrangements"; and section 40.6.5.5, "Test conditions."

C.2 Power Supply Requirements. The following conditions also apply to the mains power supplied to the DPPP motor or controls, if any:

(1) Maintain the voltage within ±5 percent of the rated value of the motor,

(2) Maintain the frequency within ±1 percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

C.3 Tolerances. For self-priming pool filter pumps, non-self-priming pool filter pumps, and pressure cleaner booster pumps, all measured load points must be within ±2.5 percent of the specified flow rate values on the reference curve. For waterfall pumps, all measured load points must be within ±2.5 percent of the specified head value (*i.e.,* 17.0 ±0.425 ft) at maximum speed.

D. Data Collection and Stabilization

D.1 Damping Devices. Use of damping devices, as described in section 40.6.3.2.2 of HI 40.6–2014 (incorporated by reference, see § 431.463), are only permitted to integrate up to the data collection interval used during testing.

D.2 Stabilization. Record data at any tested load point only under stabilized conditions, as defined in HI 40.6–2014 section 40.6.5.5.1 (incorporated by reference, see § 431.463), where a minimum of two measurements are used to determine stabilization.

D.3 Test Points. Measure the flow rate in gpm, pump total head in ft, the driver power input in W, and the speed of rotation in rpm at each load point specified in Table 1 for each DPPP varieties and speed configurations:

Table 1. Load Points (i) and Weights (w_i) for Each DPPP Variety and Speed Configuration

DPPP Varieties	Speed Configuration(s)	Number of Load Points n	Load Point i	Test Points		
				Flow Rate Q (GPM)	Head H (ft)	Speed rpm
Self-Priming Pool Filter Pumps And **Non-Self-Priming Pool Filter Pumps**	Single-speed dedicated purpose pool pumps and all self-priming and non-self-priming pool filter pumps not meeting the definition of two-*, multi-, or variable-speed dedicated purpose pool pump	1	High	Q_{high}(gpm) = $Q_{max\_speed@C}$**	H = 0.0082 × Q_{high}^2	Maximum speed
	Two-speed dedicated-purpose pool pumps*	2	Low	Q_{low}(gpm) = Flow rate associated with specified head and speed that is not below: • 31.1 gpm if pump hydraulic hp at max speed on curve C is >0.75 or • 24.7 gpm if pump hydraulic hp at max speed on curve C is ≤0.75	H = 0.0082 × Q_{low}^2	Lowest speed capable of meeting the specified flow and head values, if any
			High	Q_{high}(gpm) = $Q_{max\_speed@C}$	H = 0.0082 × Q_{high}^2	Maximum speed
	Variable-speed and multi-speed dedicated-purpose pool pumps	2	Low	Q_{low}(gpm) = • If pump hydraulic hp at max speed on curve C is >0.75, then Q_{low} = 31.1 gpm • If pump hydraulic hp at max speed on curve C is ≤0.75, then Q_{low} = 24.7 gpm	H ≥0.0082 × Q_{low}^2	Lowest speed capable of meeting the specified flow and head values
			High	Q_{high}(gpm) = 0.8 × $Q_{max\_speed@C}$	H = 0.0082 × Q_{high}^2	80 percent of maximum speed
Waterfall Pumps	Single-speed dedicated-purpose pool pumps	1	High	Q_{low}(gpm) = Flow corresponding to specified head	17.0 ft	Maximum speed
Pressure Cleaner Booster Pumps	Any	1	High	10.0 gpm	≥60.0 ft	Lowest speed capable of meeting the specified flow and head values

* In order to apply the test points for two-speed self-priming and non-self-priming pool filter pumps, self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower that are two-speed dedicated-purpose pool pumps must also be distributed in commerce either: (1) with a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has the capability, but is unable, to operate without the presence of such a pool pump control. Two-speed self-priming pool filter pumps greater than or equal to 0.711 rated hydraulic horsepower that do not meet these requirements must be tested using the load point for single-speed self-priming or non-self-priming pool filter pumps, as appropriate.

** $Q_{max\text{-}speed@C}$ = Flow at max speed on curve C (gpm)

E. Calculations

E.1 Determination of Weighted Energy Factor. Determine the WEF as a ratio of the measured flow and driver power input to the dedicated-purpose pool pump in accordance with the following equation:

$$WEF = \frac{\sum_{i=1}^{n}\left(w_i \times \frac{Q_i}{1000} \times 60\right)}{\sum_{i=1}^{n}\left(w_i \times \frac{P_i}{1000}\right)}$$

Where:

WEF = Weighted Energy Factor in kgal/kWh;

w_i = weighting factor at each load point *i,* as specified in section E.2 of this appendix;

Q_i = flow at each load point *i* measured in accordance with section D.4, in gal/min;

P_i = driver power input to the motor (or controls, if present) at each load point *i* measured in accordance with section D.4 in watts;

i = load point(s), defined uniquely for each DPPP variety and speed configuration in section D.4; and

n = number of load point(s), defined uniquely for each DPPP variety and speed configuration.

E.2 Weights. When determining WEF, apply the weights specified in Table 2 for the applicable load points, DPPP varieties, and speed configurations:

TABLE 2—LOAD POINT WEIGHTS (w_i)

DPPP varieties	Speed type	Load point(s) *i*	
		Low flow	High flow
Self-Priming Pool Filter Pumps and Non-Self-Priming Pool Filter Pumps	Single		1.0
	Two	0.80	0.20
	Multi/Variable	0.80	0.20
Waterfall Pumps	Single		1.0
Pressure Cleaner Booster Pump	Single		1.0

E.3 Determination of Horsepower and Power Factor Metrics.

E.3.1 Determine the pump power output at any load point i using the following equation:

$$P_u = \frac{Q \times H \times SG}{3956}$$

Where:

P_u = the measured pump power output at load point i of the tested pump (hp),

Q = the measured flow rate at load point i of the tested pump (gpm),

H = pump total head at load point i of the tested pump (ft), and

SG = the specific gravity of water at specified test conditions, which is equivalent to 1.00.

E.3.1.1 Determine the rated hydraulic horsepower as the pump power output measured on the reference curve at maximum rotating speed and full impeller diameter for the rated pump.

E.3.2 Determine the dedicated-purpose pool pump nominal motor horsepower according to section E.3.2.1 for single- and three-phase AC motors or section E.3.2.2 for DC motors:

E.3.2.1 For single- and three-phase AC motors, determine the dedicated-purpose pool pump nominal motor horsepower as the nominal horsepower rating associated with the appropriate values of breakdown torque, locked-rotor torque, pull-up torque, locked-rotor current, and slip, as applicable for the NEMA motor designation with which the dedicated-purpose pool pump is distributed in commerce, as indicated by the following sections of NEMA MG–1–2014 (incorporated by reference, see section § 431.463) shown in Table 3.

TABLE 3—RELEVANT NEMA MG–1 2014 SECTIONS APPLICABLE TO SMALL AND MEDIUM SINGLE- AND THREE-PHASE AC MOTORS

Motor characteristic	Single-phase AC motors	Three-phase AC motors
Breakdown Torque	Section 10.34 of NEMA MG–1-2014	Section 12.39 of NEMA MG–1-2014.
Locked-Rotor Torque	N/A	Section 12.37 or 12.38 of NEMA MG–1-2014.
Pull-up Torque	N/A	Section 12.40 of NEMA MG–1-2014.
Locked-rotor current	N/A	Section 12.35.1 of NEMA MG–1-2014.
Slip	N/A	Section 1.19.

E.3.2.2 For DC motors, determine the nominal motor horsepower according to the specifications in section 10.62 of NEMA MG–1–2014 (incorporated by reference, see section § 431.463).

E.3.3 Determine the dedicated-purpose pool pump service factor according to section E.3.3.1 for single- and three-phase AC motors or section E.3.3.2 for DC motors:

E.3.3.1 For single- and three-phase AC motors, determine the dedicated-purpose pool pump service factor based on the requirements of section 12.51 of NEMA MG–1–2014 (incorporated by reference, see section § 431.463).

E.3.3.2 For DC motors, the dedicated-purpose pool pump service factor is equal to 1.0.

E.3.4 Determine the dedicated-purpose pool pump motor total horsepower as the product of the dedicated-purpose pool pump nominal motor horsepower, determined in accordance with section E.3.2 of this appendix, and the dedicated-purpose pool pump service factor, determined in accordance with section E.3.3 of this appendix.

E.3.5 Determine the true power factor at each applicable load point specified in Table 1 of this appendix for each DPPP variety and speed configuration as a ratio of driver power input to the motor (or controls, if present) (P_i), in watts, over the product of the voltage in volts and the current in amps at each load point i, as shown in the following equation:

$$PF_i = \frac{P_i}{V_i \times I_i}$$

Where:

PF_i = true power factor at each load point i, dimensionless;

P_i = driver power input to the motor (or controls, if present) at each load point i measured in accordance with section D.4 in watts;

V_i = voltage at each load point i measured in accordance with section D.4, in volts;

I_i = current at each load point i measured in accordance with section D.4, in amps; and

i = load point(s), defined uniquely for each DPPP variety and speed configuration in section D.4.

E.4. Determination of Maximum Head. Determine the maximum head for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps by measuring the head at maximum speed and the minimum flow rate at which the pump is designed to operate continuously or safely, where the minimum flow rate is assumed to be zero unless stated otherwise in the manufacturer literature.

F. Determination of Self-Priming Capability

F.1. Test Method. Determine the vertical lift and true priming time of self-priming and non-self-priming pool filter pumps that are not already certified as self-priming under NSF/ANSI 50–2015 by testing such pumps pursuant to section C.3 of appendix C of NSF/ANSI 50–2015, "Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities" (incorporated by reference, see § 431.463), except for the modifications and exceptions listed in the following section F.1.1 through F.1.5 of this appendix:

F.1.1. Where section C.3.2, "Apparatus," and section C.3.4, "Self-priming capability test method," state that the "suction line must be essentially as shown in annex C, figure C.1;" "essentially as shown in Annex C, figure C.1" means:

- The centerline of the pump impeller shaft is situated a vertical distance equivalent to the specified vertical lift (VL), calculated in accordance with section F.1.1.1. of this section, above the water level of a water tank of sufficient volume as to maintain a constant water surface level for the duration of the test;
- the pump draws water from the water tank with a riser pipe that extends below the water level a distance of at least 3 times the riser pipe diameter (*i.e.*, 3 pipe diameters);
- the suction inlet of the pump is at least 5 pipe diameters from any obstructions, 90° bends, valves, or fittings; and
- the riser pipe that is of the same pipe diameter as the pump suction inlet.

F.1.1.1. The vertical lift (VL) must be normalized to 5.0 feet at an atmospheric pressure of 14.7 psia and a water density of 62.4 lb/ft³ in accordance with the following equation:

$$VL = 5.0ft \times \left(\frac{62.4\,{}^{lb}/{}_{ft^3}}{\rho_{test}}\right) \times \left(\frac{P_{abs,test}}{14.7psia}\right)$$

Where:

VL = vertical lift of the test apparatus from the waterline to the centerline of the pump impeller shaft, in ft;

ρ_{test} = density of test fluid, in lb/ft³; and

$P_{atm,test}$ = absolute barometric pressure of test apparatus location at centerline of pump impeller shaft, in psia.

F.1.2. The equipment accuracy requirements specified in section B, "Measurement Equipment," of this appendix also apply to this section F, as applicable.

F.1.2.1 Adjust all measurements of head (gauge pressure), flow, and water temperature must be taken at the pump suction inlet and all head measurements back to the centerline of the pump impeller shaft in accordance with section A.3.1.3.1 of HI 40.6 2014 (incorporated by reference, see § 431.463).

F.1.3. All tests must be conducted with clear water, as defined in HI 40.6–2014 (incorporated by reference, see § 431.463) and the test conditions specified in section C.3.3 of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) do not apply.

F.1.4. In section C.3.4, "Self-priming capability test method," of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463), "the elapsed time to steady discharge gauge reading or full discharge flow" is determined when the changes in head and flow, respectively, are within the tolerance values specified in table 40.6.3.2.2, "Permissible amplitude of fluctuation as a percentage of mean value of quantity being measured at any test point," of HI 40.6–2014 (incorporated by reference, see § 431.463). The measured priming time (MPT) is determined as the point in time when the stabilized load point is first achieved, not when stabilization is determined. In addition, the true priming time (TPT) is equivalent to the MPT.

F.1.5. The maximum true priming time for each test run must not exceed 10.0 minutes. Disregard section C.3.5 of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463).

G. Optional Testing and Calculations

G.1 Energy Factor. When making representations regarding the *EF* of dedicated-purpose pool pumps, determine EF on one of four system curves (A, B, C, or D) and at any given speed (*s*) according to the following equation:

$$EF_{X,s} = \frac{\left(\frac{Q_{X,s}}{1{,}000} \times 60\right)}{\left(\frac{P_{X,s}}{1{,}000}\right)}$$

Where:

$EF_{X,s}$ = the energy factor on system curve X at speed s in kgal/kWh;

X = one of four possible system curves (A, B, C, or D), as defined in section G.2 of this appendix;

$Q_{X,s}$ = flow rate measured on system curve X at speed s in gpm; and

$P_{X,s}$ = driver power input to the motor (or controls, if present) on system curve X at speed s in watts.

G.2 System Curves. The energy factor may be determined at any speed (*s*) and on any of the four system curves A, B, C, and/or D specified in Table 4:

TABLE 4—SYSTEMS CURVES FOR OPTIONAL EF TEST PROCEDURE

System curve	System curve equation *
A	$H = 0.0167 \times Q^2$
B	$H = 0.0500 \times Q^2$
C	$H = 0.0082 \times Q^2$
D	$H = 0.0044 \times Q^2$

* In the above table, Q refers to the flow rate in gpm and H refers to head in ft.

G.3 Replacement Dedicated-Purpose Pool Pump Motors. To determine the WEF for replacement DPPP motors, test each replacement DPPP motor paired with each dedicated-purpose pool pump bare pump for which the replacement DPPP motor is advertised to be paired, as stated in the manufacturer's literature for that DPPP model, according to the testing and calculations described in sections A, B, C, D, and E of this appendix. Alternatively, each replacement DPPP motor may be tested with the most consumptive dedicated-purpose pool pump bare pump for which it is advertised to be paired, as stated in the manufacturer's literature for that DPPP model. If a replacement DPPP motor is not advertised to be paired with any specific dedicated-purpose pool pump bare pumps, test with the most consumptive dedicated-purpose pool pump bare pump available.

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Part III

Department of Commerce

Defense Acquisition Regulations System

15 CFR Parts 730, 734, 738, *et al.*
Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 734, 738, 740, 742, 743, 748, 770, 772, and 774

[160217120–6120–01]

RIN 0694–AG85

Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain items subject to Department of Commerce jurisdiction. This final rule revises the CCL, as well as corresponding parts of the EAR, to implement changes made to the Wassenaar Arrangement's List of Dual-Use Goods and Technologies (WA List) maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement, or WA) at the December 2015 WA Plenary Meeting (the Plenary). The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. This rule harmonizes the CCL with the changes made to the WA List at the Plenary by revising Export Control Classification Numbers (ECCNs) controlled for national security reasons in each category of the CCL, as well as making other associated changes to the EAR.

The changes to the WA List include raising the Adjusted Peak Performance (APP) for high performance computers. The President's report for High Performance Computers was sent to Congress on June 1, 2016, to set forth the new APP in accordance with the National Defense Authorization Act (NDAA) for FY1998.

This rule also makes changes to the EAR that were not agreed to at the WA Plenary. APP parameters are amended in several places in the EAR by this rule, such as APP parameters in the *de minimis* rules, License Exception APP, and related reporting requirements. BIS is also updating license requirements and policies associated with Category 5—Part 2, including revising Export Control Classification Numbers 5A992, 5D992 and 5E992. In addition, this rule removes the Foreign National Review requirement associated with deemed exports under License Exceptions APP and CIV.

DATES: This rule is effective: September 20, 2016.

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: *Sharron.Cook@bis.doc.gov.*

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Category 6 (lasers): Mark Jaso at 202–482–0987
Category 6 (sensors and cameras): John Varesi 202–482–1114
Category 8: Michael Tu 202–482–6462
Categories 7 & 9: Daniel Squire 202–482–3710 or Reynaldo Garcia 202–482–3462
Category 9x515 (Satellites): Mark Jaso at 202–482–0987 or Reynaldo Garcia at 202–482–3462

SUPPLEMENTARY INFORMATION: The Supplementary Information is separated into four parts:

Part I—Wassenaar Arrangement Agreement Implementation;
Part II—Information Security Update and Simplification;
Part III—High Performance Computer Adjusted Peak Performance (APP) changes; and
Part IV—Removal of the Foreign National Review (FNR) procedure.

Please note that a particular part of the EAR may be affected by more than one of these Parts and the supplementary information in that Part of the summary will only pertain to the revisions related to that Part.

Part I—Wassenaar Arrangement Agreement Implementation

Background

The Wassenaar Arrangement (Wassenaar or WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a group of 41 like-minded states committed to promoting responsibility and transparency in the global arms trade, and preventing destabilizing accumulations of arms. As a Participating State, the United States has committed to controlling for export all items on the WA control lists. The lists were first established in 1996 and have been revised annually thereafter. Proposals for changes to the WA control lists that achieve consensus are approved by Participating States at annual Plenary meetings. Participating States are charged with implementing the agreed list changes as soon as possible after approval. The United States' implementation of WA list changes ensures U.S. companies have a level playing field with their competitors in other WA Participating States.

Unless otherwise indicated, the changes to the EAR described below are made in order to implement changes to the WA control lists approved at the December 2015 Plenary meeting.

Revisions to the Commerce Control List Related to WA Agreements

Revises (58) ECCNs: 0A617, 1A001, 1A002, 1A004, 1A613, 1C001, 1C002, 1C006, 1C008, 1C009, 1C608, 1E001, 1E002, 2B001, 2B006, 3A001, 3A002, 3A101, 3A292, 3B001, 3D001, 3E002, 4A001, 4A003, 4D001, 4E001, 5A001, 5B001, 5D001, 5E001, 5A002, 5B002, 5D002, 5E002, 6A001, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 6B004, 6B007, 6C005, 6E003, 7A003, 7A004, 7A008, 7B001, 7B002, 7E004, 8A001, 8A002, 9A001, 9A004, 9A012, 9B001, and 9E003.

Adds (2) ECCNs: 5A003 and 5A004.

License Exception eligibility additions: 3A002.h (LVS $5,000, GBS, CIV), 5A003 (GOV), 5E002 (TMP)

License Exception eligibility removals: 3B001.c (CIV), 4A003.e (GBS, APP, CIV), 5A004 (formerly 5A002.a.2) (GOV), 8A002.e.2 (GBS, CIV).

Category 0 Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]

0A617 Miscellaneous "equipment," materials, and Related Commodities

ECCN 0A617 is amended by adding double quotes around the term "laser" in paragraph (8) of the Related Controls paragraph in the List of Items Controlled section to clarify the entry and to indicate this is a term defined in Part 772 of the EAR.

Category 1 Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins"

1A001 "Parts" and "components" Made From fluorinated Compounds

ECCN 1A001 is amended by removing and reserving paragraph .b and removing paragraph .c from the Items paragraph of the List of Items Controlled section. Paragraph .b controlled piezoelectric polymers and copolymers, made from vinylidene fluoride (CAS 75 38 7) materials and paragraph .c controlled seals, gaskets, valve seats, etc. made from fluoroelastomers and specially designed for "aircraft," aerospace or missile use. These types of polymers/copolymers and seals/gaskets were controlled because it was thought that their fluorine content gave them high temperature and chemical resistance. After much testing, this has proven not to be the case, and therefore the need to control them as a strategic good no longer exists.

1A002 "Composite" Structures or Laminates

ECCN 1A002 is amended by adding double quotes around the term "composite" in the introductory text of Note 1 following paragraph .b.2 in the Items paragraph of the List of Items Controlled section, to indicate this is a term defined in Part 772 of the EAR.

1A004 Protective and Detection Equipment and "components"

ECCN 1A004 is amended by revising Items paragraphs .a.1, .b.1, and .c.1 by removing the phrase "adapted for use in war" and adding single quotes around the remaining phrase, 'biological agents', because the former articulation did not describe the scope of control accurately. This rule narrows the scope of control by adding Technical Note 3, which defines biological agents. Now, only biological agents and equipment that are specially designed or modified to provide protection from or detect biological agents as defined in the technical note are controlled, instead of all biological agents, protection, and detection equipment that are adapted for use in war.

1A613 Armored and Protective "equipment" and Related Commodities

ECCN 1A613 is amended by revising Items paragraph .c by adding "specially designed," which narrows the scope, but also adding to the list of control "liners, or comfort pads therefor." This revision stems from the WA agreement for Wassenaar Arrangement Munitions List (WAML) item 13.c, which deleted the vague term "components," and moved the items listed in the *id est* (*i.e.*) that included "helmet shell, liner and comfort pads" into the main body of the sentence. WA also agreed to add a Nota Bene, which this rule adds after Item paragraph .y.1, to alert people to the fact that other components and accessories for helmets may be controlled under other ECCNs on the CCL or on the USML. The term "specially designed" was already in the text of ML 13.c and for consistency is added to 1A613.c.

1C001 Materials "specially designed" for Use as Absorbers of Electromagnetic Waves, or Intrinsically Conductive Polymers

ECCN 1C001 is amended by adding double quotes around the term "laser" in two places within the Note to 1C001.b to indicate this is a term defined in Part 772 of the EAR.

1C002 Metal Alloys, Metal Alloy Powder and Alloyed Materials

ECCN 1C002 is amended by revising the Note at the top of the Items paragraph by adding the words "specially formulated" and replacing the word "substrates" with "purposes." This revision clarifies what is described in the Note as not being controlled in ECCN 1C002, which enhances the effective control of the items that remain in this ECCN.

1C006 Fluids and Lubricating Materials

ECCN 1C006 is amended by removing and reserving Items paragraph .a, because the hydraulic fluids specified in 1C006.a are either not in use any longer or are being phased out because most hydraulic fluids in use today are commercially available synthetic oil.

1C008 Non-Fluorinated Polymeric Substances

ECCN 1C008 is amended by revising Technical Note 1 at the end of the Items paragraph to add 1C008.f (Polybiphenylenethersulphone) materials to the list of materials to which 'glass transition temperature (Tg)' applies in order to clarify the method of determining 'Tg' for materials specified by 1C008.f.

1C009 Unprocessed Fluorinated Compounds

ECCN 1C009 is amended by removing and reserving paragraph .a (copolymers of vinylidene fluoride. . .), which no longer represents militarily critical materials.

1C608 Energetic Materials and Related Commodities

ECCN 1C608 is amended by replacing the double quotes with single quotes around the term 'controlled materials' in the Related Definitions paragraph because the term is not defined in Section 772.1 of the EAR or on the WA List but the definition is included in the Related Definitions paragraph. The WA definition for 'propellant' is added to the Related Definitions paragraph, so that the definition will be applied as applicable to items controlled under 1C608. Single quotes are added around the term 'controlled materials' in Items paragraphs .c through .h, .j, and .k to indicate the local definition in the Related Definitions paragraph. Single quotes are also added around the terms 'single base,' 'double base,' 'triple base,' 'sheetstock,' and 'carpet rolls,' because these terms are defined in the Technical Notes following Items paragraph .a.2. The Note below Items paragraph .a.2 to Technical Notes is revised, because definitions of terms belong in Technical Notes, while Notes are reserved for clarifying the scope of controls in the Items paragraph. Single quotes are added around the term 'propellant' in Items paragraphs .a and .n, as well as in the Note and Technical Notes below Items paragraph .a.2. Double quotes are added around the term "pyrotechnic" in Items paragraphs .j and .n to indicate a definition in Part 772 and for consistency with the WA. Single quotes are added around the term 'mixture' to indicate the addition of a Technical Note at the end of the Items paragraph that defines the term. CAS numbers are added to Note 1 and 2 for consistency with the WA List.

1E001 "Technology"

ECCN 1E001 is amended by removing reference to "1A001.b and 1A001.c" in the Heading and in the first NS paragraph in the table of the License Requirements section because this rule removes and reserves these paragraphs.

1E002 Other "technology"

ECCN 1E002 is amended by adding double quotes around the term "aircraft" in the Note to 1E002.f to indicate this is a term defined in Part 772 of the EAR.

Annex to Category 1—List of Explosives

The Annex to Category 1 is amended by replacing the period with a semicolon in entry 48, because a new entry 49 is added. Entry 49 is added to list "BTNEN (Bis(2,2,2-trinitroethyl)-nitramine) (CAS 19836–28–3)."

Category 2—Materials Processing

2B001 Machine Tools and Any Combination Thereof

ECCN 2B001 is amended by revising Items paragraphs .a, .b.1 and .b.2.a. The parameters for machine tools for turning and milling are revised to better align with the Unidirectional Positioning Repeatability (UPR) parameter that was implemented by WA in 2015. Because UPR value is generally proportional to the travel length of axis, WA agreed to set different control values depending on the travel length of machine tools. In addition, Note 2 is added to clarify that 2B001.a does not apply to certain bar machines (Swissturn), because bar machines (Swissturn) are one of the typical examples of machine tools that are classified as controlled items even when their positioning control performances are not as precise as the other types of controlled machine tools.

2B006 Dimensional Inspection or Measuring Systems, Equipment, and "electronic assemblies"

ECCN 2B006 is amended by revising the NP Column 1 paragraph in the License Requirements table because the revision to Items paragraph .b made by this rule will make the parameters inconsistent with the Nuclear Suppliers Group list. This rule revises Items paragraph b.1.c in the List of Items Controlled section to adjust the performance threshold to be consistent with the current lithography tool specification 3B001.f.1. Also, this rule revises the Note following the introductory Items paragraph b.1 to point out that the controls for optical-encoders are found in 2B006.b.1.c. Double quotes are added around the term "laser" in the Note to Items paragraph .b.2 to indicate this is a term defined in Part 772 of the EAR.

Category 3—Electronics

3A001 Electronic Items

ECCN 3A001 is amended by revising the Heading to better articulate the scope of control in this ECCN. This rule revises Items paragraph .a.5.a.2 by increasing the output rate parameter to 500 million words per second for 10 bits or more but less than 12 bits, based on the advances in the technology since the last threshold adjustment. For Items paragraphs .a.5.a.3 through .a.5.a.5, the resolution breakout is changed from a resolution of "12 bit" to "12 bit or more, but less than 14 bit," "more than 12 bit but equal to or less than 14 bit" is changed to "14 bit or more, but less than 16 bit," and "resolution of more than 14 bit" is changed to "resolution of 16 bit or more." The output rates are also changed for .a.5.a.4 to "14 bit or more, but less than 16 bit" from 125 to 250 million words per second and for .a.5.a.5 "16 bit or more" from 20 to 65 million words per second.

The introductory text to 3A001.b is amended by replacing the word "components" with "items" to better describe the scope of this paragraph. The energy density is revised from "300 Wh/kg" to "350 Wh/kg" for Items paragraph 3A001.e.1.b "secondary cells."

Double quotes are added to the term "accuracy" in Items paragraph 3A001.f to indicate this term is defined in Part 772 of the EAR, and the "±" before "1.0 second of arc" is deleted, because the "±" symbol made the parameter unclear.

3A002 General Purpose "electronic assemblies," Modules and Equipment

ECCN 3A002 is amended by revising the Heading to better reflect the scope of the entry.

The License Requirements section is amended by adding Missile Technology (MT) controls, because the MT control for 4A003.e "Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5," is moved to 3A002.h. The National Security (NS) and Anti-terrorism (AT) controls that apply to 4A003.e are already present in 3A002, as NS and AT apply to the entire entry of 3A002. The eligibility paragraphs for License Exceptions LVS ($5,000), GBS and CIV are amended by adding 3A002.h (unless controlled for MT), in order to maintain the license exception eligibility this equipment had under 4A003.e. ECCN 3A101 is added to the Related Controls paragraph in the List of Items Controlled section to reference the overlapping MT control of 3A002.h. Items paragraph a.5 "waveform digitizers and transient recorders" is removed and reserved, because the items are now controlled under the newly added Items paragraph 3A002.h. The Nota Bene under a.5 is revised to point to the new location of the control.

Items paragraph 3A002.a.6 "digital instrumentation data recorders ..." is amended by revising the description of the scope to read "digital data recorders." "Using magnetic disk storage techniques" is deleted because it is replaced by disk or solid-state drive memory as modern digital data recorders can use either or both memory storage technologies. The sample data rate parameter is deleted and continuous throughput is increased to avoid capturing predominantly commercial items. The phrase "sustained continuous throughput" is added to clearly distinguish from "peak data recording rate." Technical Notes for continuous throughput rate (previously included under 3A002.a.5) are added with the deletion of the term "mass" in Technical Note 3. These parameters more clearly delineate those products that are of military concern.

Lastly, Items paragraph 3A002.h "Electronic assemblies, modules or equipment that perform analog-to-digital conversions," along with specific parameters, is added to the List of Items Controlled section in order to consolidate where this equipment is controlled and distinguish it from the 3A002.a.6 "digital instrumentation data recorder systems" controls.

3A101 Electronic Equipment, Devices, "parts," and "components," Other Than Those Controlled by 3A001

ECCN 3A101 is amended by replacing the reference to 4A003.e with 3A002.h, as well as updating the description of equipment in the Related Controls paragraph in the List of Items Controlled section.

3A292 Oscilloscopes and Transient Recorders

ECCN 3A292 is amended by replacing the reference to 3A002.a.5 with 3A002.h in the Heading, because of the new location of these controls.

3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials

ECCN 3B001 is amended by revising the CIV paragraph in the List Based License Exceptions section to remove paragraph .c "anisotropic plasma dry etching equipment" because WA has agreed to remove and reserve this paragraph as a result of a foreign availability determination.

Items paragraph .e.1 "interfaces for wafer input and output" in the List of Items Controlled section is revised by removing the reference to 3B001.c, which is removed by this rule, and by adding references to 3B001.a.2 and a.3 to add specificity.

Technical Note 1 is revised by removing the word "etch," after Items paragraph .e.2, because etch equipment is deleted from 3B001.c.

Items paragraph .f.2 is corrected by adding a Note because the Note was inadvertently removed by last year's WA implementation rule.

Items paragraph .f.3, "lithography equipment . . . specially designed for mask making," is revised and Items paragraph .f.4, "Equipment designed for device processing using direct writing methods," is added in the List of Items Controlled section to align the feature size metric for all lithography systems.

3D001 Software

ECCN 3D001 is amended by replacing the reference to 3A002.g with 3A002.h because 3D001 is supposed to control software specially designed for the development or production of equipment controlled by 3A001.b to new 3A002.h The same revision is made to the National Security (NS) control paragraph in the License Requirements table of 3D001. The eligibility paragraph of License Exception CIV is replaced with N/A (Not Applicable), because 3B001.c, which was the only paragraph in the eligibility paragraph, is no longer controlled.

3E002 "Technology" . . . Other Than That Controlled in 3E001 for the "development" or "production" of a "microprocessor microcircuit," "micro-computer microcircuit" and Microcontroller Microcircuit Core . . .

ECCN 3E002 is amended by revising the CIV paragraph in the License Exception section to remove the Foreign National Review (FNR) Requirement. This removal is necessary to conform the entry with the removal of the FNR procedure from the EAR as part of this rule.

The Technical Note in Items paragraph .a that revises 'vector processor unit' by adding the phrase "and vector registers of at least 32 elements each" to separate short-vectors from traditional supercomputer vectors.

Items paragraph .c is amended by changing the phrase "four 16-bit fixed-point multiply-accumulate results per cycle" to "eight 16-bit fixed-point multiply-accumulate results per cycle" because updating the control threshold for Digital Signal Processors (DSPs) is consistent with advancements in digital signal processing technology.

Prior to the publication of this rule, in the Note to paragraph 3E002.c, the multimedia extension exemption only applied to digital signal processors even though it is also used in other processor types, such as in x86 processors. Therefore, in this rule, the exemption note is extended to apply to all entries under 3E002; specifically, the reference to 3E002.c is revised to read 3E002. In addition, this Note is enumerated as Note 1 and the existing Notes 1 and 2 are redesignated as Notes 2 and 3.

Category 4—Computers

Note 3 to Category 4, which is a reminder that computers and related equipment that perform functions specified in Category 5—Part 2 should be reviewed against Category 5—Part 2, is removed. This reminder appeared in several places throughout the Commerce Control List and is now a new note with the General Technology and Software Notes in Supplement No. 2 to part 774.

4A001 Electronic Computers and Related Equipment

ECCN 4A001 is amended by revising the Related Controls paragraph in the List of Items Controlled section to remove the reminder to consider Category 5—Part 2 if the equipment performs or incorporates "information security" functions as primary functions. WA decided to streamline the list by removing the many occurrences of this note and having it appear only with the General Technology and Software Notes, which in the EAR are located in Supplement No. 2 to part 774.

4A003 "Digital Computers," "electronic assemblies," and Related Equipment Therefor

ECCN 4A003 is amended by removing and reserving 4A003.e "Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5" and adding a Nota Bene to point to the new location for the control in 3A002.h. The License Requirements section is revised by removing the Missile Technology control, which only applied to 4A003.e. Reference to 4A003.e is removed from the List Based License Exceptions section, specifically GBS, APP and CIV, and from Note 1 to Items paragraph .c. Reserved paragraphs .d through .f are now codified as a range of reserved paragraphs.

The last listed item, "Equipment designed for "signal processing," in Note 1 (located at the beginning of the Items paragraph in the List of Items Controlled section) is removed as a conforming change tracking the removal of 4A003.e.

The "Adjusted Peak Performance" ("APP") for "digital computers" is raised from 8.0 to 12.5 Weighted TeraFLOPS (WT) in Items paragraph .b in the List of Items Controlled section. The Congressional notification requirement set forth in subsections 1211(d) and (e) of the National Defense Authorization Act (NDAA) for FY 1998 (Pub. L. 105–85, November 18, 1997, 111 Stat. 1932) provides that the President must submit a report to Congress 60 days before adjusting the composite theoretical performance level above which exports of digital computers to Tier 3 countries require a license. The President sent a report to Congress on June 1, 2016 that establishes and provides justification for the 12.5 WT control level using the APP formula.

4D001 "Software" and 4E001 "technology"

ECCNs 4D001 and 4E001 are amended by removing NP from the Reason for Control paragraph and the sentence related to NP controls directly below the License Requirements table in the License Requirements section, as these references erroneously suggest that digital computer technology or software are controlled by the Nuclear Suppliers Group (NSG) for nonproliferation reasons and consequently require a license from BIS for Nuclear Proliferation (NP) reasons. Digital computer software and technology controls are not controlled by the NSG.

The TSR paragraph in the List Based License Exceptions section is amended by revising the APP from 2.0 to 12.5 WT because of technological advances and in line with changes made elsewhere in this rule.

The Special Conditions for STA paragraph is amended by revising the APP from 2.0 to 12.5 WT because of technological advances and in line with changes made elsewhere in this rule.

Items paragraph .b.1 in the List of Items Controlled section is amended by revising the APP from 1.0 to 6.0 WT and in line with changes made elsewhere in this rule.

Category 5—Part 1—"Telecommunications"

Category 5—Part 1 is amended by removing Nota Bene 2 (N.B.2) at the beginning of the Category and moving this Note to the General Technology and Software Notes in Supplement No. 2 to part 774.

5A001 Telecommunications Systems, Equipment, "components" and "accessories"

ECCN 5A001.d "electronically steerable phased array antennas" is amended by dividing the operation frequency control parameter into four ranges and adding two new parameters "effective radiated power (ERP)" and "effective isotropic radiated power (EIRP)." The purpose of the revision is to focus or narrow the scope of control and release from control consumer "WiGig" products for indoor use. These "WiGig" products are used as home entertainment alternatives for HDMI cables. Electronically steerable phased array antennas (ESAs) are used in consumer products operating in the un-licensed "60 GHz" band (57–64 GHz) and operate over short distances (~10 m) in-room. A typical installation would allow a laptop computer to send multi-media signals across a living room to an HD–TV.

5B001 Telecommunication Test, Inspection and Production Equipment, "components" and "accessories"

ECCN 5B001 is amended by removing and reserving Items paragraph .b.2.b "performing optical amplification using Praseodymium Doped Fluoride Fiber Amplifiers (PDFFA)" because PDFFA are not widely used in the communications industry due to low efficiency and compatibility problems with silica optical fiber-based communications systems. This rule also revises Item paragraph .b.4 by raising the level for "radio equipment employing Quadrature-Amplitude-Modulation (QAM) techniques" from 256 to 1,024 on the basis of technological advances in QAM techniques.

5D001 "Software"

ECCN 5D001 is amended by revising Items paragraph .d.4 by raising the level for radio equipment employing Quadrature-Amplitude-Modulation (QAM) techniques" from 256 to 1,024 because of technological advances in QAM techniques.

5E001 "Technology"

ECCN 5E001 is amended by removing Items paragraph .c.2.b "performing optical amplification using Praseodymium Doped Fluoride Fiber Amplifiers (PDFFA)" because PDFFA are not widely used in the communications industry due to low efficiency and compatibility problems with silica optical fiber-based communications systems. The Note to Items paragraph .c.2.c is amended by removing the phrase "specially designed" because the definition of "specially designed" does not apply to technology and this removal harmonizes the CCL with the WA List. This rule also revises Items paragraph .c.4.a by raising the level for radio equipment employing Quadrature-Amplitude-Modulation (QAM) techniques" from 256 to 1,024 on the basis of technological advances in QAM techniques.

Category 5—Part 2—"Information Security"

Category 5—Part 2 is amended by removing and reserving Note 1 and moving the control status Note to the General Technology and Software Notes in Supplement No. 2 to part 774. BIS is making editorial revisions to the phrase "Category 5, part 2" in Notes 2 and 4 by changing it read "Category 5—Part 2." In addition, Note 2 is revised by changing the phrase "encryption products" to read "information security" to make the words consistent with the section heading. The introductory text to Note 3 and the Technical Note to paragraph .b.4 of Note 3 are revised to reference two newly added ECCNs: 5A003 and 5A004. Paragraph 1.b in the Note to the Cryptography Note is amended by adding a sentence to the end to clarify that a simple price enquiry is not considered to be a consultation. An undesignated section title is added under the Product Group A title to read "Cryptographic "information security.""

5A002 "Information security" Systems, Equipment and "components"

ECCN 5A002 is amended by revising the Heading to remove the word "therefor." Related Controls paragraph 2 is removed to correspond with the revision of ECCNs 5A992 and 5D992 and a new paragraph 2 is added to alert exporters to a related United States Munitions List (USML) control for 5A002.d and .e, and Note 3 paragraph is revised to harmonize with changes in this rule. The Items paragraph of 5A002 is restructured, including by moving some of the items to newly added ECCNs. The EI control is moved to the License Requirements Table and is revised to replace the referenced paragraphs ".a.1, .a.2, .a.5, .a.6 and .a.9" with "entire entry." The Note in the beginning of the Items paragraph is moved to the end of Items paragraph .a and amended to only pertain to Items paragraph .a.

5A002.a is amended by adding the word "cryptographic" before the term "information security" to better describe the scope of Items paragraph .a. The Technical Note to 5A002.a is amended by adding the phrase "In Category 5—Part 2" to clarify the scope of the Technical Note. Items paragraph .a.2 "designed or modified to perform 'cryptanalytic functions'" is removed and reserved because this control is now located in 5A004.a. A Nota Bene is added to point to the new location of this control. Reserved Items paragraph .a.3 is removed.

The 5A002 exclusion Note is amended by revising "5A002" to read "5A002.a" in the introductory text. The sentence stating, "However, these items are instead controlled under 5A992." is removed from the introductory text of the Note. 5A992.a and .b are removed by this rule; therefore, items meeting the exclusion Note are now designated EAR99. The reference to new ECCNs 5A003 and 5A004 is added to paragraph (a)(1)(a) of the Technical Note. Many of the paragraphs in this Note are moved. See below for a guide to the reordering of the paragraphs. Paragraph (b) (former paragraph (d)) of the Technical Note is amended by removing "The term" and clarified by adding "in 5A002 Note b." Paragraph (g) (former paragraph (j)) introductory text is amended by removing all the references to paragraphs in 5A002. Paragraph (h) (former paragraph (k)), is revised by correcting the format of the reference to Category 5—Part 2. Paragraph (j)(2)(a) (former paragraph (m)(2)(a)), is amended by replacing the word "to" with "in."

The following is a guide to the movement of the paragraphs within the exclusion Note:

(b), which was "reserved," is now former paragraph (d)
(c), which was "reserved," is former paragraph (e)
(d) is former paragraph (f)
(e) is former paragraph (g)
(f) is former paragraph (i)
(g) is former paragraph (j)
(h) which was "reserved" is former paragraph (k)
(i) is former paragraph (l)
(j) is former paragraph (m)
(k), (l) and (m) are removed.

Items paragraphs of ECCN 5A002.a.4, .a.5, .a.6, .a.8 and .a.9 are moved to the following new locations:

.a.4—5A003.b
.a.5—5A002.e
.a.6—5A002.d
.a.8—5A003.a
.a.9—5A002.c

Items paragraph .a.7, "Non-cryptographic information and communications technology (ICT) security systems and devices that have been evaluated and certified by a national authority to exceed class EAL-6 (evaluation assurance level) of the Common Criteria (CC) or equivalent," is removed because it is an obsolete certification.

Items paragraph .b is revised by removing the phrase "systems, equipment and components," because the Header already states what is included in the scope of the control.

Category 5—Part 2 is amended by adding an undesignated title "non-cryptographic information security" before newly added ECCN 5A003.

5A003 "Systems," "equipment," and "components," for non-cryptographic "information security,"

ECCN 5A003 is added to control items formerly classified as 5A002.a.8 in 5A003.a and formerly classified as 5A002.a.4 in 5A003.b. The same license requirements and license exceptions that applied to those paragraphs are added to 5A003.

Category 5—Part 2 is amended by adding an undesignated title "defeating, weakening or bypassing information security" before the newly added ECCN 5A004.

5A004 "Systems," "equipment," and "components" for Defeating, Weakening or Bypassing "information security"

ECCN 5A004 is added to control items formerly classified as 5A002.a.2 with no change to the license requirements and license exceptions that formerly applied.

5B002 "Information Security" test, inspection, and "production" Equipment

ECCN 5B002 is amended by adding references to ECCNs 5A003 and 5A004 in Items paragraphs .a and .b.

5D002 "Software"

ECCN 5D002 is amended by moving the EI controls from the License Requirements Note to the License Requirement table in the License Requirements section. The Related Controls paragraph 1 is removed to correspond with the removal of paragraphs in ECCN 5A992 and 5D992, and paragraph 2 is revised to harmonize with other changes to encryption in this rule. The Note relating to publicly available encryption software is removed because this rule makes publicly available encryption source code not subject to the EAR after the notification requirement of § 742.15(b) has been fulfilled, as well as the corresponding publicly available encryption object code software. The EI controls are also revised by adding new ECCN 5A004. Items paragraphs .a and .c.1 are amended by adding new ECCNs 5A003 and 5A004.

5E002 "Technology"

ECCN 5E002 is amended by moving EI controls into the License Requirements table in the License Requirements section. Additionally, new ECCN 5A004 is added to the EI controls and to Note 2 in the License Requirements Notes in the License Requirements section. Items paragraph .a in the List of Items Controlled section is revised by adding new ECCNs 5A003 and 5A004.

Other EAR Revisions Corresponding to the Category 5—Part 2 Restructuring

ECCN 5A004 is added to License Exception GOV in § 740.11(a)(2)(iii) and (c)(3)(iii) to maintain the license exception restriction for items that have moved from ECCN 5A002 to ECCN 5A004. Despite the movement of ECCN 5A002 items to ECCN 5A003, ECCN 5A003 is not added because it contains items that are no longer controlled for EI reasons.

The Entity List, Supplement No. 4 to part 744, is amended by replacing the reference "5D002 or 5A002." with "5A002, 5A004 or 5D002." in the third column "License Requirement," in the entry "Corporacion Nacional de Telecommunicaciones (CNT) . . ." under Ecuador.

Category 6—Sensors and Lasers

6A001 Acoustic Systems, Equipment, and "components"

ECCN 6A001 is amended by replacing "positioning accuracy" with "determined position error" in Items paragraphs .a.1.d.2 and .a.1.e.2 in the List of Items Controlled section because this term better conveys the identified performance parameter of this equipment. Double quotes are added around the term "accuracy" in Items paragraphs .a.2.d.1, .b.1.b, and .b.2 in the List of Items Controlled section to indicate that this is a term defined in Part 772 of the EAR. This rule makes an editorial correction by replacing double quotes that were inadvertently removed around the term "components" in the Heading, introductory text of Items paragraphs a, a.1, a.1.d, a.2 and the Note to 6A001.a.2 in the List of Items Controlled section.

6A002 Optical sensors and equipment, and "components" Therefor

ECCN 6A002 is amended by adding paragraph .d "Thermopile arrays having less than 5,130 elements" to exclusion Note 2 to 6A002.a.3 in the Items paragraph of the List of Items Controlled section. BIS is making this change because applying the definition of 'microbolometer arrays' in 6A002.a.3.f to thermopile arrays leads to the control of such devices; however, thermopile arrays would never reach the performance of microbolometer arrays.

6A003 Cameras, Systems, or Equipment, and "components" Therefor

ECCN 6A003 is amended by removing paragraph (3) of the Related Controls paragraph in the List of Items Controlled section because the referenced paragraphs, 8A002.d.1 and .e, are removed by this rule. Related Controls paragraphs (4) and (5) are redesignated as (3) and (4).

6A004 Optical Equipment and "components"

ECCN 6A004 is amended by adding an exclusion Note to Items paragraph .a.3 in the List of Items Controlled section for mirrors "specially designed" to direct solar radiation for terrestrial heliostat installations. Items paragraphs .d.2.a.3 and .d.2.b are revised by adding the word "(better)" after the word less for consistency and clarity, so people will understand that any measurement that is less than the specified parameter means the item is performing at better than the control level.

6A005 "Lasers," "components" and Optical Equipment

The Technical Note that follows Note 2 to 6A005.a.6.b in the Items paragraph of the List of Items Controlled section is amended by replacing the reference "Note 2.a" with "Note 2 a.2" to correct the reference. Items paragraphs .a.6.a.2 and .b.6.b.2 in the List of Items Controlled section are amended by raising the "average output power" from "10" to "30" W and "10" to "50" W. The main parameter of interest for industrial pulsed lasers is "average output power." A higher average output power has a positive impact on productivity (due to higher repetition rates). For that reason, and in light of the technological progress in the field of industrial Laser Materials Processing (LMP) equipment, the average power is increased while the parameters "pulse energy" and "peak power" (which have a higher relevance for applications of concern) remain unchanged.

The Note to 6A005.c.1 is moved below Items paragraph 6A005.c.1.b.

An exclusion Note is added to Items paragraphs 6A005.d.1.d.1.d and 6A005.d.1.d.2.d to exclude epitaxially-fabricated monolithic devices.

Double quotes are added around the term "laser" in Items paragraphs .e.3, .e.3.c.1, .e.3.c.2, .g.1, .g.2, .g.3 and the Technical Note at the end of the Items paragraph to indicate that this is a term defined in Part 772 of the EAR.

Double quotes are added around the term "accuracy" in Items paragraph f.3 to indicate that this is a term defined in Part 772 of the EAR.

6A007 Gravity Meters (gravimeters) and Gravity Gradiometers

ECCN 6A007 is amended by adding double quotes around the term "accuracy," in three places (Items paragraphs .a, .b.1 and .b.2 in the List of Items Controlled section) to indicate that this is a term defined in Part 772 of the EAR.

6A008 Radar Systems, Equipment and Assemblies

ECCN 6A008 is amended by adding double quotes around the term "accuracy" in Items paragraph .a.2, adding double quotes around the term "lasers" in Items paragraph. j.3, and adding double quotes around the term "aircraft" in Note 2 of the Technical Notes at the end of the Items paragraph in the List of Items Controlled section. These quotes are added to indicate that the terms are defined in Part 772 of the EAR.

6B004 Optical Equipment

ECCN 6B004 is amended by revising Items paragraph 6B004.a to replace the symbol "±" that precedes 0.1% with the phrase "equal to or better than" to clarify that entry.

6B007 Equipment To Produce, Align, and Calibrate Land Based Gravity Meters With a Static "accuracy" of Better Than 0.1 mGal.

ECCN 6B007 is amended by adding double quotes around the term "accuracy" in the Heading to indicate that this is a term defined in Part 772 of the EAR.

6C005 "Laser" Materials

ECCN 6C005 is amended by adding double quotes around the term "laser" in Items paragraphs b.1 and b.2 in the List of Items Controlled section to indicate that this is a term defined in Part 772 of the EAR.

6E003 Other "technology"

ECCN 6E003 is amended by adding double quotes around the term "accuracies" in Items paragraph .d to indicate that the singular form of "accuracy" is a term defined in Part 772 of the EAR and revising the Items paragraph by moving all the topic headings out from the subparagraphs and reserving subparagraphs that do not have parameters at this time.

Category 7—Navigation and Avionics

7A003 'Inertial measurement equipment or systems'

ECCN 7A003 is amended by removing the second paragraph in the Technical Note at the beginning of the Items paragraph of the List of Items Controlled section. Double quotes are added around the term "accuracies" in Items paragraph .a; and double quotes are added around the term "accuracy" in Items paragraphs .b, .c.1, and .c.2 in the List of Items Controlled section to indicate that "accuracy" is a term defined in Part 772 of the EAR. Single quotes are replaced by double quotes around the term Circular Error Probable in the Items paragraph .a.1 and around the term's acronym CEP in Items paragraphs .a.1, .a.2, .a.3, and .b in the List of Items Controlled section because this term and its acronym are added to the definitions in § 772.1 of the EAR as part of this rule.

7A004 'Star trackers' and "components" Therefor

ECCN 7A004 is amended by adding double quotes around the term "accuracy" in the Items paragraph .a in the List of Items Controlled section to indicate that this is a term defined in Part 772 of the EAR.

7A008 Underwater Sonar Navigation Systems

ECCN 7A008 is amended by adding double quotes around the term "accuracy" in the Heading to indicate that this is a term defined in Part 772 of the EAR.

7B001 Test, Calibration, or Alignment Equipment

ECCN 7B001 is amended by adding double quotes around the term "aircraft" in paragraph (1) of the Related Definitions paragraph in the List of Items Controlled section to indicate that this is a term defined in Part 772 of the EAR.

7B002 Equipment "specially designed" To Characterize Mirrors for Ring "laser" Gyros

ECCN 7B002 is amended by adding double quotes around the term "accuracy" in Items paragraphs .a and .b of the List of Items Controlled section because it is a defined term.

7E004 Other "technology"

ECCN 7E004 is amended by adding double quotes around the term "accuracy" in Items paragraph .a.7 and adding double quotes around the term "aircraft" in the Items paragraphs .b.1, .b.7.b.4, .b.8.a and .b.8.b to indicate that these terms are defined in Part 772 of the EAR. The word "directional" is replaced by "direction" in the Items paragraph .c.2 of the List of Items Controlled section for clarity and consistent with the term "circulation-controlled direction control systems," as defined in Part 772 of the EAR.

Category 8—Marine

8A001 Submersible Vehicles and Surface Vessels

ECCN 8A001 is amended by revising the Related Controls paragraph in the List of Items Controlled section by removing reference to Category 5—Part 2 because the applicability of Category 5—Part 2 to other categories is stated in a new Note in the General Technology and Software Notes in Supplement No. 2 to part 774. Double quotes are added around the term "accuracy" in Items paragraph .e.2 of the List of Items Controlled section to indicate that this is a term defined in Part 772 of the EAR.

8A002 Marine Systems, Equipment, "parts" and "components"

ECCN 8A002 is amended by removing reference to 8A002.e.2 from the GBS and CIV eligibility paragraphs in the List Based License Exception section because 8A002.e is removed and reserved. Items paragraph .d "underwater vision systems" is revised by removing equipment specified in d.1 but no longer in use and redesignating d.2 as .d. Items paragraph .e "photographic still cameras "specially designed" or modified for underwater use below 150 m . . ." in the List of Items Controlled section is removed and reserved because modern digital photographic equipment and separate underwater housings have replaced underwater film format cameras.

Category 9—Aerospace and Propulsion

9A001 Aero Gas Turbine Engines

ECCN 9A001 is amended by adding double quotes around the term "aircraft" in paragraph b. of Note 1 to Items 9A001.a and in Items paragraph .b in the List of Items Controlled section to indicate that this is a term defined in Part 772 of the EAR.

9A004 Space Launch Vehicles and "spacecraft," "spacecraft buses," "spacecraft payloads," "spacecraft" On-Board Systems or Equipment, and Terrestrial Equipment

ECCN 9A004 is amended by replacing the reference to "5A002.a.5, 5A002.a.9" with "5A002.c, 5A002.e" in Items paragraph .d in the List of Items Controlled section to reflect the revisions this rule makes to ECCN 5A002.

9A012 Non-Military "Unmanned Aerial Vehicles," ("UAVs"), Unmanned "airships," Related Equipment and "components"

ECCN 9A012 is amended by removing the exclusion Note for model aircraft or model "airships" at the end of the Items paragraph in the List of Items Controlled section because these commodities are not within the scope of ECCN 9A012.

9B001 Equipment, Tooling or Fixtures, "specially designed" for Manufacturing Gas Turbine engine blades, vanes or "tip shrouds"

ECCN 9B001 is amended by revising Items paragraph .b in the List of Items Controlled section to include combined cores and shells (moulds) because it is now possible, through the use of Additive Manufacturing, to produce a single shell (mould) containing a core in position.

9E003 Other "technology"

ECCN 9E003 is amended by adding double quotes around the term "aircraft" in the following five places: Two places in Related Controls paragraph (2) in the List of Items Controlled section; in the Note to

9E003.h in the List of Items Controlled section; in Items paragraph .j; and in the Nota Bene that follows 9E003.j in the List of Items Controlled section. These double quotes are added to indicate that this is a term defined in Part 772 of the EAR.

Part 748—Applications

Supplement No. 7 to part 748 "Validated End User" list is amended by removing the reference to 3B001.c in eight Chinese entities, because this paragraph of ECCN 3B001 is removed by this rule.

Other changes to part 748 are described in two separate paragraphs below in relation to encryption updates and the removal of the foreign national review requirement.

Section 774.1 Introduction

An explanation about the use of Chemical Abstracts Service (CAS) numbers in the Commerce Control List is added in new paragraph (e). This explanation comes from Note 2 of the Wassenaar Arrangement's Munitions List. The information is helpful for exporters when trying to classify chemicals on the CCL.

Supplement No. 2 to Part 774 "General Technology and Software Notes"

Supplement No. 2 to part 774 "General Technology and Software Notes" is amended by adding paragraph 3 "General "Information Security" Note" (GISN) to alert the public to consider Category 5—Part 2 when classifying information security items or items with information security functions.

Supplement No. 6 to Part 774 "Sensitive List"

Supplement No. 6 to part 774 "Sensitive List" is amended by revising paragraphs (2)(i) "2D001," (2)(ii) "2E001," (2)(iii) "2E002," (4)(ii) "4D001,"and (4)(iii) "4E001" to match the revisions made to corresponding ECCNs by this rule. These changes will affect Wassenaar reporting requirements found in § 743.1.

Part 770—Item Interpretations

Section 770.2 is amended by making editorial revisions to paragraph (l)(1), (l)(2) and (m) to align ECCN references to revisions made by this rule.

Part 772 Terms and Definitions (Related to WA agreements)

Section 772.1 is amended by adding more categories to those associated with the terms "accuracy" and "airship." The term "Circular Error Probable" and its acronym "CEP" are added to the definitions in § 772.1 because the term and its acronym are used more broadly than in one ECCN or subparagraph. The definition of "cryptography" is revised by moving the definition of "fixed" to the Technical Notes of this term. The term "FADEC" is revised by adding the word "systems," thus changing the term to "FADEC systems." Other revisions to Part 772 that are not related to WA agreements are described later in this Supplementary Information.

The term "frequency switching time" is revised to retain the relative value but tighten the tolerance from ± 0.05% to ± 0.1 part per million to account for challenges in making measurements using the wide tolerance of ± 0.05%. The revision also applies an absolute value for frequencies below 1 GHz, because the 0.1 parts per million metric necessitates the difficult task of resolving very small frequency differences at low frequencies.

Category 7 is removed from the list of categories where "Full Authority Digital Engine Control Systems" is used.

The category references for the term "information security" are revised by removing Cat 4, 5P1 and 8, and adding a reference to the newly added General "Information Security" Note (GISN).

The term "laser" is revised to more closely link the amplification process with the observed coherencies in laser output.

The term "lighter-than-air vehicles" is added to § 772.1 because of its use in ECCNs 2B352, 9A120, and 9A610.

The term "optical amplification" is removed consistent with its removal from 5A991.b.5.e, 5B001.b.2.b, and 5E001.c.2.b, due to the term's association with a method of communication that is no longer in use.

The terms "propellants" and "pyrotechnic(s)" are added to § 772.1 because they are used frequently in the EAR (propellants in 1C608.a and .n and pyrotechnic(s) in ECCN 1C608.j and .n).

The term "source code" is revised by adding Category 1 and Category 5—Part 2 to the categories where this term is used.

This rule removes the term "system tracks" because it is not used in the EAR.

Part II—Information Security Update and Simplification

In conjunction with the restructuring of Category 5—Part 2 of the CCL that was agreed upon by WA, BIS is updating and streamlining information security sections and policies within the EAR. Below is a summary of these updates.

Revised ECCNs (4): 5E002 (Related Controls), 5A992, 5D992 and 5E992.

Part 730—General Information

Supplement No. 1 to part 730 is amended by removing the reference to 740.13(e) for paperwork collection 0694–137 "License exemptions and exclusions."

Part 734—Scope of the EAR

The Note to § 734.3(a)(4) is amended by removing the reference to § 740.17(b)(4)(ii), which is deleted by this rule, and replacing the reference "section 740.17(a)" with the reference "§ 740.17(a)(4)," which refers to foreign products developed with or incorporating U.S.-origin encryption source code components or toolkits.

Section 734.3, the Note to paragraphs (b)(2) and (b)(3) is amended by revising the citation "§ 740.13(e)" to read "§ 742.15(b)." This change is necessary because this rule moves the provision in § 740.13(e) to § 742.15(b) and then removes and reserves § 740.13(e).

Section 734.4 is amended by revising paragraph (b), which set forth special requirements for certain encryption items, to harmonize with other changes made to encryption items throughout this rule.

Section 734.7, paragraph (b), is amended by revising the citation "§ 740.13(e)" to "§ 742.15(b)." This change is necessary because this rule moves the provision in § 740.13(e) to § 742.15(b) and removes and reserves § 740.13(e).

Section 734.17, paragraph (b)(2) is amended by revising the last two sentences. This change is necessary because this rule moves the provision in § 740.13(e) to § 742.15(b) and removes and reserves § 740.13(e). In addition, encryption object code "software" that corresponds to encryption source code "software" meeting the notification requirement of § 742.15(b) is now publicly available, whereas before this rule it was eligible for License Exception TSU.

Part 740—License Exceptions

Section 740.13(e) is deleted because this notification requirement is moved to newly revised § 742.15(b).

The introductory paragraph of § 740.17 is amended to update the ECCNs that are eligible for License Exception ENC consistent with the implementation of the WA agreement to restructure Category 5—Part 2. There is no substantive change to eligible items.

The introductory paragraphs of both §§ 742.15(a)(1) and 740.17 are revised to state that certain items classified in Category 5—Part 2 of the Commerce Control List and described in License Exception ENC that meet the criteria of

Note 3 to Category 5—Part 2—*i.e.,* are mass market encryption items—are classified under ECCNs 5A992.c and 5D992.c and are no longer subject to "EI" or "NS" controls. The mass market provisions were previously set forth in § 742.15(b), but in this rule are consolidated into § 740.17 to delete duplicative text. Country Group E:2 is added to the introductory paragraph in two places, as well as § 740.17(b)(2)(iv)(B), to correct an oversight in not adding E:2 when Cuba was added to Country Group E:2.

New § 740.17(a)(1)(ii) is added to authorize exports, reexports, and transfers (in-country) among related parties for internal use when the parent company is headquartered in a Supplement No. 3 to part 740 country (License Exception ENC Favorable Treatment Countries). No classification or reporting is required for such exports, reexports or transfers (in-country).

New § 740.17(a)(3) is added to authorize reexports of foreign-made products developed with or incorporating U.S. encryption source code, components or toolkits without classification by or reporting to BIS provided that the U.S.-origin encryption items have previously been classified or reported and authorized by BIS and the cryptographic function has not changed. This provision is moved from § 740.17(b)(4)(ii) to place all authorizations under License Exception ENC that do not require classification or self-classification in one paragraph.

Section 740.17(b) is amended to delete the requirement for an encryption registration. The encryption registration requirement, added to the Export Administration Regulations in 2010, is being deleted to create a more streamlined and efficient reporting processes. Accordingly, references to the encryption registration requirement are removed throughout the EAR (*e.g.,* parts 738 and 748). Exporters who self-classify encryption products under § 740.17(b)(1) will continue to be required to submit a self-classification report on an annual basis. The requirements for the self-classification report are moved to § 740.17(e)(3) from § 742.15(c). In addition, § 740.17(b) is amended to provide that if an exporter obtains a Commodity Classification request (CCATS) classification from BIS for a product that is eligible for self-classification, the product does not need to be included in the annual self-classification report. BIS will make CCATS for products described in § 740.17(b)(1) available to the ENC Encryption Request Coordinator through the SNAP–R system.

Section 740.17(b)(2) is amended to update the performance parameters of "network infrastructure" items. In paragraph (b)(2)(A)(1), the performance parameter for aggregate encrypted WAN, MAN, VPN, backhaul or long-haul throughput (including communications through wireless network elements such as gateways, mobile switches, and controllers) is updated from greater than 90 Mbps to equal to or greater than 250 Mbps. Paragraph (b)(2)(i)(A)(2), which set forth a performance parameter for wire (line), cable or fiber optic WAN, MAN or VPN single channel input data rate exceeding 154 Mbps is deleted, as this parameter is redundant in light of the aggregate encrypted throughput parameter in paragraph (b)(2)(A)(1). For media gateways and other unified communications (UC) infrastructure, including Voice-over-Internet Protocol (VoIP) services, the media encryption encrypted signaling is raised from more than 1,000 to 2,500 endpoints in paragraph (b)(2)(i)(A)(4).

Section 740.17(b)(2) is also amended to authorize exports, reexports, and transfers (in-country) of "network infrastructure" items to "less sensitive government end users" in all countries except Country Group E:1 and E:2 countries. A definition of "less sensitive government end users" is added to part 772. BIS has issued many so-called "worldwide" encryption licensing arrangements (ELAs) with this scope and a semi-annual reporting requirement. Because there is no country scope difference between the ELAs and the License Exception ENC authorization to non-"government end users," BIS is making such exports, reexports, and transfers (in-country) eligible for License Exception ENC.

This rule also adds a Note to paragraph (b)(2)(i)(A) to add a carve out for certain types of satellite infrastructure and to define 'network infrastructure.' The satellite carve out was necessary because paragraph (b)(2), which precludes mass market treatment, was catching these consumer goods. The definition for 'network infrastructure' is needed to clarify the scope of the license exception.

This rule adds new paragraph (b)(2)(i)(H) for items in 5A002.d or .e and equivalent or related software therefor classified under 5D002. Such commodities and software were eligible for (b)(1) and (b)(3), but are now moved to (b)(2) because BIS determined that they warrant a higher level of control. BIS does not anticipate an increase in license applications because historically BIS has not received license applications for such items.

Section 740.17(b)(4) is deleted because it is no longer needed. Section 740.17(b)(4)(i) described products with short range wireless encryption functions, most of which have been decontrolled pursuant to the decontrol notes in ECCN 5A002 on the Commerce Control List or pursuant to Note 4 to Category 5—Part 2 of the Commerce Control List. Section 740.17(b)(4)(ii) is moved to § 740.17(a)(4) (see explanation above for paragraph (a)(4)).

Section 740.17(f), "Grandfathering," is deleted as it is no longer necessary.

Supplement No. 3 to Part 740 is amended to add Croatia because it is a member of the European Union. This revised list harmonizes with the European Union's list of countries that do not require a license for encryption items.

Part 742—CCL Based Controls

The introductory paragraph of § 742.15(a) is amended to update the ECCNs that are controlled for EI reasons consistent with the implementation of the WA agreement to restructure Category 5—Part 2. There is no substantive change to eligible items. Country Group E:2 is added to § 742.15(a)(2) to correct an oversight in not adding it when Cuba was added to Country Group E:2. Section 742.15(a) is also amended to state that mass market encryption products are now released from Encryption Item (EI) and National Security (NS) controls pursuant to § 740.17, not § 742.15(b), and to clarify that encryption license arrangements are available for exports to all "government end users" in most countries, including military end users, now that there is a defined subset of government end users (*i.e.,* less sensitive government end users). The mass market provisions are deleted in § 742.15(b) and added (moved) to § 740.17(b) in order to consolidate these provisions in one place. In addition, the classification requirements for mass market encryption products are moved to § 740.17(b). New § 742.15(b) sets forth the notification requirement when encryption source code is made publicly available. The notification requirement is the same as previously set forth in § 740.13(e).

Sections 742.15(c) (Self-classification reporting) and 742.15(f) (Grandfathering) are deleted. The self-classification reporting provisions formerly in § 742.15(c) have been moved to § 740.17(e)(3) in order to consolidate all the mass-market provisions into § 740.17. The encryption registration requirement previously set forth in §§ 740.17(b) and 742.15(b) is deleted.

The grandfathering provisions are no longer necessary.

Supplement No. 5 to part 742 is deleted because the encryption registration requirement previously set forth in §§ 740.17(b) and 742.15(b) is deleted.

Supplement No. 6 to part 742 "Technical Questionnaire . . ." is amended by revising the title of the supplement to include "other "information security" items," as well as revising the titles to paragraphs (a) and (b). Most of the revisions to this supplement are to clarify the information that must be provided in a classification request for encryption or "information security" items. This rule removes reference to the encryption registration in paragraphs (a)(2) and (d)(1) because this rule removes the requirement for encryption registration. Paragraph (b)(3) is revised for clarity. Paragraph (b)(7) is the former (b)(10). Paragraphs (b)(2), (b)(3), and (b)(9) are revised to clarify the information request. Paragraph (b)(10) is now question (7) from the deleted Supplement No. 5 to part 742. Paragraph (b)(11) has been updated to correspond more closely with § 740.17(b)(2). Paragraph (b)(12) is redesignated as (b)(13) and a new paragraph (b)(12) is added, which addresses information related to § 740.17(b)(3). This rule adds paragraph (b)(14) to address Internet Protocol Security (IPsec) capabilities in products.

Supplement No. 8 to part 742 is amended by revising the introductory paragraph, introductory text to paragraph (a), and paragraphs (a)(6) and (c)(1) to remove references to the deleted encryption registration requirement and to harmonize citation references to track amendments in this rule. The list of products in paragraph (a)(6) is revised to more accurately describe the types of products being reported. Paragraphs (a)(7) through (12) are added to include fields that remain necessary now that Supplement No. 5 is deleted. Paragraph (b)(2) and (b)(3) are revised to add six additional fields to identify the company or person submitting the report, its address, email, point of contact, telephone number, non-U.S. components and non-U.S. manufacturing locations, and bringing the total number of fields to twelve. Paragraph (c)(4) is added to note that only products self-classified by the exporter should be reported.

Part 748—Application

This rule removes reference to the encryption registration and procedures, and aligns citation and ECCN references with revisions in this rule in § 748.1(a) and (d), § 748.3 title, paragraph (a), paragraph (d) title and paragraph, § 748.7(a) and (d), § 748.8 (r), § 748.9(c)(1)(viii), Supplement No. 1 to part 748 Block 5 paragraph, Supplement No. 2 paragraph (r), and Supplement No. 7 "Validated End User" list.

Other changes to Part 748 that relate to the removal of the foreign national review submission are described further down in this Supplementary Information section. One change to Supp. No. 6 to part 748 is described above in relation to a WA agreement.

Part 772—Terms and Definitions

In addition to the revisions to Part 772 related to WA agreements, this rule amends Part 772 in light of information security updates and simplification. Part 772 is amended to add definitions of "less sensitive government end users" (as applied to encryption items) and "more sensitive government end users" (as applied to encryption items). BIS had been using these lists of less and more sensitive government end users for purposes of post-shipment reporting and pre-shipment notification requirements in encryption licensing arrangements (ELAs); however, they were not published in the EAR. These definitions will be used in § 742.15(a)(2) license review policy for Encryption License Arrangements (ELAs) and in § 740.17(b)(2)(i) for a specific License Exception ENC authorization.

In § 772.1 of the EAR, this rule revises the definition of "publicly available encryption software" to provide the updated reference of § 742.15(b) for notification requirements, instead of § 740.13(e) of the EAR.

Category 5—Part 2

The Nota Bene to Note 3 (Cryptography Note) is amended to remove the reference to the encryption registration requirement and to add reference to the self-classification report because the information that was previously needed for the encryption registration will be obtained from the self-classification report.

5D002 "Information Security" "software"

This rule makes editorial revisions to the license requirements for this ECCN.

5E002 "Information Security" "technology"

This rule makes editorial revisions to the license requirements for this ECCN. The last sentence of the Related Controls note is deleted. Technology related to equipment excluded from control under ECCN 5A002 is not necessarily controlled under ECCN 5E992.

5A992 Equipment Not Controlled by 5A002

Paragraphs 5A992.a and .b are deleted because information security, telecommunication, and information security equipment, whether or not containing encryption, and components therefor will now either be controlled in the higher level Category 5—Part 2 ECCNs or not at all (*i.e.,* EAR99). The only items still described in ECCN 5A992 are mass market encryption items in paragraph 5A992.c.

5D992 "Information security" "software" Not Controlled by 5D002

Paragraphs 5D992.a and .b are deleted. The only items still described in ECCN 5D992 are mass market encryption items in 5D992.c. See explanation for 5A992 above. Some items previously classified as 5D992.a or .b may now be classified as 4D993. You may submit a classification request to BIS for a free official classification or self-classify as appropriate.

5E992 "Information Security" "technology"

ECCN 5E992 is amended by removing and reserving Items paragraph .a, which is a consequential change because of the removal of 5A992.a and .b and 5D992.a and .b.

A separate companion rule also published today is revising the license requirements of twelve entities on the Entity List to "all items subject to the EAR" in order to narrow the license requirement differences between EAR99 and 5A992.a and .b.

The entry for "Shanghai Huahong Grace Semiconductor Manufacturing Corporation" on the VEU list is amended by revising the eligible items, because some of the items from 5A002 are now in new ECCN 5A004. Therefore, ECCN 5A004 is added to the list of eligible items for this entry.

Part III—High Performance Computer Adjusted Peak Performance (APP) Related Changes

In conjunction with the raising of APP numbers in Category 4 by WA agreements, BIS is updating License Exception APP.

Section 740.7 License Exception APP

In addition to the revisions connected with the removal of the Foreign National Review procedures, License Exception APP is amended by replacing the list of twenty-two (22) countries in paragraph (c)(3)(i) that are eligible to receive technology and software for computers of unlimited Adjusted Peak Performance (APP) under License Exception APP with the list of thirty-six (36) countries in Country Group A:5 in Supplement No. 1 to part 740 because these countries are considered most trusted allies with like-minded export controls. This adds 14 Computer Tier 1 countries (Argentina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Iceland, S. Korea, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia) to the list of countries eligible to receive technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the "development," "production," or "use" of computers, including "electronic assemblies" and specially designed components therefor classified in ECCN 4A003 under license exception APP.

For the rest of Computer Tier 1 countries the APP threshold for deemed exports of "development" and "production" computer technology and source code is raised from an APP of 25 to 40 Weighted TeraFLOPS (WT) in paragraph (c)(3)(ii) and the "use" technology and source code is raised from an APP of 120 to 200 WT in paragraph (c)(3)(iii).

For Computer Tier 3 countries, the APP threshold for deemed exports of "development" and "production" technology and source code is raised from an APP of 12 to 16 WT in paragraph (d)(3)(i). The APP threshold for deemed exports of "use" technology and source code is raised from an APP of 25 to 32 WT in paragraph (d)(3)(ii).

These APP threshold revisions are based on technological advancements in computer technology, as well as license data on the deemed export of computer technology.

Section 734.4 *De minimis* U.S. content.

Section 734.4 is amended by revising paragraph (a)(1) "items for which there is no *de minimis* level" to link the first APP value to ECCN 4A003.b for Tier 3 countries and the second APP value to 4A994.b for Cuba, Iran, North Korea, Sudan, and Syria. In making this revision, BIS is directly linking these ineligibility provisions for computers with the control levels for computers for these countries.

§ 743.2 High performance computers: Post shipment verification reporting.

Section 743.2 is amended by replacing the reference to the Adjusted Peak Performance of 8.0 with a reference to ECCN 4A003.b in the requirement for post shipment verification reporting for exports and reexports of high performance computers to Computer Tier 3 destinations. By replacing the APP number with the reference to 4A003.b, it will always be directly linked with the APP control parameter of ECCN 4A003.

Part IV—Removal of the Foreign National Review (FNR) Procedure

The Foreign National Review (FNR) procedure was implemented in License Exceptions CIV and APP (then CTP) in 2004 as a less burdensome procedure for authorizing deemed exports that would otherwise require licenses. Since the procedure was implemented, according to licensing statistics, BIS has processed a total of approximately 410 applications, of which 230 were approved, none were denied, and 180 were returned without action due to ineligibility or because the FNR was not required for the deemed export at issue. These statistics indicate that the procedure is not used widely by industry, perhaps because it is not well understood. In addition, the fact that the review procedure has not resulted in any denials in over eight years indicates that government licensing resources should be redirected to other more sensitive licensing issues. Removing this requirement removes an unnecessary delay for foreign nationals to receive technology that is eligible for deemed exports under License Exceptions CIV and APP. Therefore, BIS is removing the FNR procedure from the EAR so that License Exception CIV and APP may be utilized for eligible deemed exports.

License Exception CIV—§ 740.5

This rule removes paragraph (d) under § 740.5, which is the requirement under License Exception CIV to submit an FNR request to BIS for deemed exports and reexports of 3E002 technology to foreign nationals. The removal of this paragraph conforms to the removal of the FNR procedure from the EAR. This change allows exporters to utilize License Exception CIV for deemed exports of eligible 3E002 technology to a foreign national having a home country included in EAR Country Group D:1 without having to submit a FNR request to BIS.

Part 748 Applications (Classification, Advisory, and License) and Documentation

Section 748.7 "Registering for electronic submission of license applications and related documents" is amended by removing references to the FNR requirement for License Exceptions APP and CIV under paragraphs (a) and (d). The removal of these words conform this provision with the removal of the FNR procedure from the EAR.

Section 748.8 "Unique Application and Submission Requirements" is amended by removing paragraphs (s) "Foreign National Review Request" and (t) "Foreign National Support Statement for deemed exports." Corresponding paragraphs (s) and (t) are removed from Supplement No. 2 to part 748 as well. The removal of these sections and paragraphs conforms with the removal of the FNR procedure from the EAR. Guidelines for foreign national license applications are found on the BIS Web site at *http://www.bis.doc.gov/index.php/policy-guidance/deemed-exports*.

Other changes to Part 748 related to the removal of the encryption registration requirement and a WA agreement are described in two separate paragraphs in a previous section of this Supplementary Information section.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on September 20, 2016, pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exports, reexports and transfers (in-country) before November 21, 2016. Any such items not actually exported, reexported and transfered (in-country) before midnight, on November 21, 2016, require a license in accordance with this regulation.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, "Multi-Purpose Application," and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other collection has been approved by OMB under control number 0694–0106, "Reporting and Recordkeeping Requirements under the Wassenaar Arrangement," and carries a burden hour estimate of 21 minutes for a manual or electronic submission. The collection under control number 0694–0137 "License Exemptions and Exclusions" is revised because the notification requirement for publicly available software is amended by this rule. The notification requirement for publicly available source code software is moved from License Exception TSU to § 742.15(b) of the EAR. Therefore, the burden hours will be moved from one section to another within 0694–0137 as a consequence of this rule and citations and requirements will be updated within the supporting statement for this collection upon the next renewal submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by email at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 1401 Constitution Ave. NW., Room 6622, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 41 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached at the December 2015 plenary session of the WA. Because the United States is a significant exporter of the items covered by this rule, implementation of this rule is necessary for the WA to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by WA members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30-day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the WA in a timely manner and would injure the credibility of the United States in this and other multilateral regimes.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave. NW., Room 2099, Washington, DC 20230.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Parts 738, 770 and 772

Exports.

15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR part 742

Exports, Terrorism.

15 CFR part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 730, 734, 738, 740, 742, 748, 770, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for Part 730 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O.

13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of May 3, 2016, 81 FR 27293 (May 5, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 1 to Part 730 [Amended]

■ 2. Supplement No. 1 to part 730 is amended by removing the reference to "740.13(e)" under the "Reference in the EAR" column for the collection number 0694–0137.

PART 734—[AMENDED]

■ 3. The authority citation for Part 734 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 4. Section 734.3 is amended by revising the Note to paragraph (a)(4) and in the Note to paragraphs (b)(2) and (b)(3) by removing the citation "§ 740.13(e)" and adding "§ 742.15(b)" in its place.

The revision reads as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(a) * * *

(4) * * *

Note to paragraph (a)(4): Certain foreign-manufactured items developed or produced from U.S.-origin encryption items exported pursuant to License Exception ENC are subject to the EAR. See § 740.17(a) of the EAR.

* * * * *

■ 5. Section 734.4 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 734.4 *De minimis* U.S. content.

(a) *Items for which there is no de minimis level.* (1) There is no *de minimis* level for the export from a foreign country of a foreign-made computer with an Adjusted Peak Performance (APP) exceeding that listed in ECCN 4A003.b and containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3 destinations; or exceeding an APP listed in ECCN 4A994.b and containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Cuba, Iran, North Korea, Sudan, and Syria.

* * * * *

(b) *Special requirements for certain encryption items.* Non-U.S.-made items that incorporate U.S.-origin items that are listed in this paragraph are subject to the EAR unless they meet the *de minimis* level and destination requirements of paragraph (c) or (d) of this section and the requirements of this paragraph.

(1) The U.S.-origin commodities or software, if controlled under ECCN 5A002, ECCN 5B002, equivalent or related software therefor classified under ECCN 5D002, and "cryptanalytic items" classified under ECCN 5A004 or 5D002, must have been:

(i) Publicly available encryption source code classified under ECCN 5D002 that has met the notification requirement of § 742.15(b), see § 734.3(b)(3) of the EAR. Such source code does not have to be counted as controlled U.S.-origin content in a *de minimis* calculation;

(ii) Authorized for License Exception ENC by BIS after classification pursuant to § 740.17(b)(3) of the EAR;

(iii) Authorized for License Exception ENC by BIS after classification pursuant to § 740.17(b)(2) of the EAR, and the non-U.S.-made product will not be sent to any destination in Country Groups E:1 and E:2 in Supplement No. 1 to part 740 of the EAR; or

(iv) Authorized for License Exception ENC pursuant to § 740.17(b)(1) of the EAR.

(2) U.S.-origin encryption items classified under ECCNs 5A992.c, 5D992.c, or 5E992.b.

Note to paragraph (b): See Supplement No. 2 to this part for de minimis calculation procedures and reporting requirements.

§ 734.7 [Amended]

■ 6. In § 734.7, paragraph (b) is amended by revising the citation "§ 740.13(e)" to read "§ 742.15(b)."

■ 7. In § 734.17, paragraph (b)(2) is amended by revising the last two sentences to read as follows:

§ 734.17 Export of encryption source code and object code software.

* * * * *

(b) * * *

(2) * * * See § 742.15(b) of the EAR for notification requirements for export or reexports of encryption source code "software" considered to be publicly available or published consistent with the provisions of § 734.3(b)(3). Publicly available encryption source code "software" and corresponding object code are not subject to the EAR, when the encryption source code "software" meets the notification requirements in § 742.15(b) of the EAR.

* * * * *

PART 738—[AMENDED]

■ 8. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 9. In § 738.4, revise paragraph (a)(2)(ii)(B) to read as follows:

§ 738.4 Determining whether a license is required.

(a) * * *

(2) * * *

(ii) * * *

(B) If no, a license is not required based on the particular Reason for Control and destination. Provided that General Prohibitions Four through Ten do not apply to your proposed transaction and the License Requirement section does not refer you to any other part of the EAR to determine license requirements. For example, any applicable encryption classification requirements described in § 740.17(b) of the EAR must be met for certain mass market encryption items to affect your shipment using the symbol "NLR." Proceed to parts 758 and 762 of the EAR for information on export clearance procedures and recordkeeping requirements. Note that although you may stop after determining a license is required based on the first Reason for Control, it is best to work through each applicable Reason for Control. A full analysis of every possible licensing requirement based on each applicable Reason for Control is required to determine the most advantageous License Exception available for your particular transaction and, if a license is required, ascertain the scope of review conducted by BIS on your license application.

* * * * *

PART 740—[AMENDED]

■ 10. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

§ 740.5 [Amended]

■ 11. Section 740.5 is amended by removing paragraph (d).

■ 12. Section 740.7 is amended by revising paragraphs (a), (c)(3), and (d)(3) and removing paragraph (d)(4).

The revisions read as follows:

§ 740.7 Computers (APP).

(a) *Scope*—(1) *Commodities.* License Exception APP authorizes exports, reexports and transfers (in-country) of computers, including "electronic assemblies" and specially designed components therefor controlled by ECCN 4A003 exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception APP eligibility, use the APP parameter to the exclusion of other technical parameters in ECCN 4A003.

(2) *Technology and software.* License Exception APP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the "development," "production," or "use" of computers, including "electronic assemblies" and specially designed components therefor classified in ECCN 4A003 to Computer Tier countries as provided by this section.

* * * * *

(c) * * *

(3) *Eligible technology and software.* (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited APP are eligible for export, reexport, transfer (in-country) under License Exception APP to countries listed in Country Group A:5, see Supplement No. 1 to this part; and

(ii) "Development" and "production" technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 40 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(iii) "Use" technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 200 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) * * *

(3) *Eligible technology and source code.* (i) "Development" and "production" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 16 Weighted TeraFLOPs (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) of this section.

(ii) "Use" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 32 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) of this section.

* * * * *

■ 13. Section 740.11 is amended by revising paragraphs (a)(2)(iii) and (c)(3)(iii) to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(a) * * *

(2) * * *

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5A004, 5D002, or 5E002 may not be exported, reexported, or transferred (in-country) under this paragraph (a). See § 740.17 of the EAR (License Exception ENC) for possible alternative license exception authorization.

* * * * *

(c) * * *

(3) * * *

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5A004, 5D002, or 5E002 (see § 740.17 of the EAR for License Exception ENC);

* * * * *

§ 740.13 [Amended]

■ 14. Section 740.13 is amended by removing and reserving paragraph (e).

■ 15. Section 740.17 is revised to read as follows:

§ 740.17 Encryption Commodities, Software, and Technology (ENC).

License Exception ENC authorizes export, reexport, and transfer (in-country) of systems, equipment, commodities, and components therefor that are classified under ECCNs 5A002, 5B002, equivalent or related software and technology therefor classified under 5D002 or 5E002, and "cryptanalytic items" classified under ECCNs 5A004, 5D002 or 5E002. This License Exception ENC does not authorize export or reexport to, transfer (in-country) in, or provision of any service in any country listed in Country Groups E:1 or E:2 in Supplement No. 1 to part 740 of the EAR, or release of source code or technology to any national of a country listed in Country Groups E:1 or E:2. Reexports and transfers (in-country) under License Exception ENC are subject to the criteria set forth in paragraph (c) of this section. Paragraphs (b) and (d) of this section set forth information about classifications required by this section. Items described in paragraphs (b)(1) and (b)(3)(i), (ii), or (iv) of this section that meet the criteria set forth in Note 3 to Category 5—Part 2 of the Commerce Control List (the "mass market" note) are classified under ECCN 5A992.c or 5D992.c following self-classification or classification by BIS and are no longer subject to "EI" and "NS" controls. Paragraph (e) sets forth reporting required by this section. For items exported under paragraphs (b)(1), (b)(3)(i), (ii), or (iv) of this section and therefore excluded from paragraph (e) reporting requirements, exporters are reminded of the recordkeeping requirements in part 762 of the EAR and that they may be required to make such records available upon request. All classification requests, and reports submitted to BIS pursuant to this section for encryption items will be reviewed by the ENC Encryption Request Coordinator, Ft. Meade, MD.

(a) *No classification request or reporting required.* License Exception ENC authorizes the export, reexport, or transfer (in-country) to the end users and for the end uses set forth in paragraphs (a)(1) through (3) of this section, without submission of a classification request, self-classification report or sales report to BIS.

(1) *Certain exports, reexports, transfers (in-country) to 'private sector end users'—(i) Internal "development" or "production" of new products.* License Exception ENC authorizes certain exports, reexports, and transfers (in-country) of items described in paragraph (a) of this section for the internal "development" or

“production” of new products by ‘private sector end users,’ wherever located, that are headquartered in a country listed in Supplement No. 3 of this part.

(ii) *Certain exports, reexports, transfers (in-country) to related parties, not involving “development” or “production” of new products.* For internal end uses among ‘private sector end users’ other than the “development” or “production” of new products, License Exception ENC authorizes exports, reexports, and transfers (in-country) of non-U.S.-origin items, described in paragraph (a) of this section, to ‘private sector end users’ wherever located provided that:

(A) That item became subject to the EAR after it was produced;

(B) All parties to the transaction are subsidiaries of the same parent company headquartered in a country listed in Supplement No. 3 of this part; and

(C) The characteristics or capabilities of the existing item are not enhanced, unless otherwise authorized by license or license exception.

Note to paragraph (a)(1): A ‘private sector end user’ is either: An individual who is not acting on behalf of any foreign government; or a commercial firm (including its subsidiary and parent firms, and other subsidiaries of the same parent) that is not wholly owned by, otherwise controlled by or acting on behalf of, any foreign government.

(2) *Exports, reexports, transfers (in-country) to “U.S. Subsidiaries.”* License Exception ENC authorizes export, reexport, and transfer (in-country) of items described in paragraph (a) of this section to any “U.S. subsidiary,” wherever located. License Exception ENC also authorizes export, reexport, transfer (in-country) of such items by a U.S. company and its subsidiaries to foreign nationals who are employees, individual contractors or interns of a U.S. company or its subsidiaries if the items are for internal company use, including the “development” or “production” of new products, without prior review by the U.S. Government.

Note to paragraphs (a)(1) and (2): All items produced or developed with items exported, reexported, or transferred (in-country) under paragraphs (a)(1) or (2) of this section are subject to the EAR. These items may require the submission of a classification request before sale, reexport or transfer to non-“U.S. subsidiaries,” unless otherwise authorized by license or license exception.

(3) *Reexports and transfers (in-country) of non-U.S. products developed with or incorporating U.S.-origin encryption source code, components, or toolkits.* License Exception ENC authorizes the reexport and transfer (in-country) of non-U.S. products developed with or incorporating U.S.-origin encryption source code, components or toolkits that are subject to the EAR, provided that the U.S.-origin encryption items have previously been classified or reported and authorized by BIS and the cryptographic functionality has not been changed. Such products include non-U.S. developed products that are designed to operate with U.S. products through a cryptographic interface.

Note to paragraph (a)(3): This exception from classification and reporting requirements does not apply to non-U.S.-origin products exported from the United States.

(b) *Classification request or self-classification report.* For products described in paragraph (b)(1) of this section that are self-classified by the exporter, a self-classification report in accordance with paragraph (e)(3) of this section is required from specified exporters, reexporters and transferors; for products described in paragraph (b)(1) of this section that are classified by BIS via a CCATS, a self-classification report is not required. For products described in paragraphs (b)(2) and (3) of this section, a thirty-day (30-day) classification request is required in accordance with paragraph (d) of this section. An exporter, reexporter, or transferor may rely on the producer’s self-classification (for products described in (b)(1), only) or CCATS for an encryption item eligible for export or reexport under License Exception ENC under paragraph (b)(1), (2), or (3) of this section. Exporters are still required to comply with semi-annual sales reporting requirements under paragraph (e)(1) or (2) of this section, even if relying on a CCATS issued to a producer for specified encryption items described in paragraphs (b)(2) and (b)(3)(iii) of this section.

(1) *Immediate authorization.* This paragraph (b)(1) authorizes the exports, reexports, and transfers (in-country) of the associated commodities self-classified under ECCNs 5A002.a or 5B002, and equivalent or related software therefor classified under 5D002, except any such commodities, software, or components described in (b)(2) or (3) of this section, subject to submission of a self-classification report in accordance with § 740.17(e)(3) of the EAR. Items described in this paragraph (b)(1) that meet the criteria set forth in Note 3 to Category 5—Part 2 of the Commerce Control List (the “mass market” note) are classified as ECCN 5A992.c or 5D992.c following self-classification or classification by BIS and are removed from “EI” and “NS” controls.

(2) *Classification request required.* Thirty (30) days after the submission of a classification request with BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph under License Exception ENC authorizes certain exports, reexports, and transfers (in-country) of the items specified in paragraph (b)(2) and submitted for classification.

Note to paragraph (b)(2 introductory text): Immediately after the classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph also authorizes exports, reexports, and transfers (in-country) of:

1. All submitted encryption items described in this paragraph (b)(2), except “cryptanalytic items,” to any end user located or headquartered in a country listed in Supplement No. 3 to this part;
2. Encryption source code as described in paragraph (b)(2)(i)(B) to non-“government end users” in any country;
3. “Cryptanalytic items” to non-“government end users,” only, located or headquartered in a country listed in Supplement No. 3 to this part; and
4. Items described in paragraphs (b)(2)(iii) and (b)(2)(iv)(A) of this section, to specified destinations and end users.

(i) *Cryptographic commodities, software, and components.* License Exception ENC authorizes exports, reexports, and transfers (in-country) of the items in paragraph (a)(i)(A) of this section to “less sensitive government end users” and non- “government end users” located or headquartered in a country not listed in Supplement No. 3 to this part, and the items in paragraphs (b)(2)(i)(B) through (H) to non “government end users” located or headquartered in a country not listed in Supplement No. 3.

(A) *‘Network Infrastructure.’* ‘Network infrastructure’ commodities and software, and components therefor, meeting any of the following with key lengths exceeding 80-bits for symmetric algorithms:

(*1*) *WAN, MAN, VPN, backhaul and long-haul.* Aggregate encrypted WAN, MAN, VPN, backhaul or long-haul throughput (including communications through wireless network elements such as gateways, mobile switches, and controllers) equal to or greater than 250 Mbps;

(*2*) [Reserved]

(*3*) *Satellite infrastructure.* Transmission over satellite at data rates exceeding 10 Mbps;

(*4*) *Media gateways and other unified communications (UC) infrastructure,* *including Voice-over-Internet Protocol (VoIP) services.* Media (voice/video/data) encryption or encrypted signaling to more than 2,500 endpoints, including centralized key management therefor; *or*

(*5*) *Terrestrial wireless infrastructure.* Air interface coverage (*e.g.,* through base stations, access points to mesh networks, and bridges) exceeding 1,000 meters, where any of the following applies:

(*i*) Maximum transmission data rates exceeding 10 Mbps (at operating ranges beyond 1,000 meters); *or*

(*ii*) Maximum number of concurrent full-duplex voice channels exceeding 30;

Notes to paragraph (b)(2)(i)(A):

1. The License Exception ENC eligibility restrictions of paragraphs (b)(2)(i)(A)(3) (satellite infrastructure) and (b)(2)(i)(A)(5) (terrestrial wireless infrastructure) do not apply to satellite terminals or modems meeting all of the following:

a. The encryption of data over satellite is exclusively from the user terminal to the gateway earth station, and limited to the air interface; and

b. The items meet the requirements of the Cryptography Note (Note 3) in Category 5—Part 2 of the Commerce Control List.

2. 'Network infrastructure' (as applied to encryption items). A 'network infrastructure' commodity or software is any "end item," commodity or "software" for providing one or more of the following types of communications:"

(a) Wide Area Network (WAN);
(b) Metropolitan Area Network (MAN);
(c) Virtual Private Network (VPN);
(d) Satellite;
(e) Digital packet telephony/media (voice, video, data) over Internet protocol;
(f) Cellular; or
(g) Trunked.

Note 1 to paragraph 2: 'Network infrastructure' end items are typically operated by, or for, one or more of the following types of end users:

(1) Medium- or large- sized businesses or enterprises;
(2) Governments;
(3) Telecommunications service providers; or
(4) Internet service providers.

Note 2 to paragraph 2: Commodities, software, and components for the "cryptographic activation" of a 'network infrastructure' item are also considered 'network infrastructure' items.

(B) *Certain "encryption source code."* "Encryption source code" that is not publicly available as that term is used in § 742.15(b) of the EAR;

(C) *Customized items.* Encryption software, commodities and components therefor, where any of the following applies:

(*1*) *Customized for government end users or end uses.* The item has been designed, modified, adapted, or customized for "government end user(s);" *or*

(*2*) *Custom or changeable cryptography.* The cryptographic functionality of the item has been designed or modified to customer specification or can be easily changed by the user;

(D) *Quantum cryptography.* ECCN 5A002.c or 5D002 "quantum cryptography" commodities or software;

(E) [Reserved]

(F) *Network penetration tools.* Encryption commodities and software that provide penetration capabilities that are capable of attacking, denying, disrupting or otherwise impairing the use of cyber infrastructure or networks;

(G) *Public safety/first responder radio (private mobile radio (PMR)).* Public safety/first responder radio (*e.g.,* implementing Terrestrial Trunked Radio (TETRA) and/or Association of Public-Safety Communications Officials International (APCO) Project 25 (P25) standards);

(H) *Specified cryptographic ultra-wideband and "spread spectrum" items.* Encryption commodities and components therefor, classified under ECCNs 5A002.d or .e, and equivalent or related software therefor classified under ECCN 5D002.

(ii) *Cryptanalytic commodities and software.* "Cryptanalytic items" classified in ECCN 5A004 or 5D002 to non- "government end users" located or headquartered in countries not listed in Supplement No. 3 to this part.

(iii) *"Open cryptographic interface" items.* Items that provide an "open cryptographic interface," to any end user located or headquartered in a country listed in Supplement No. 3 to this part.

(iv) *Specific encryption technology.* Specific encryption technology as follows:

(A) *Technology for "non-standard cryptography."* Encryption technology classified under ECCN 5E002 for "non-standard cryptography," to any end user located or headquartered in a country listed in Supplement No. 3 to this part;

(B) *Other technology.* Encryption technology classified under ECCN 5E002 except technology for "cryptanalytic items," "non-standard cryptography" or any "open cryptographic interface," to any non-"government end user" located in a country not listed in Country Group D:1, E:1, or E:2 of Supplement No. 1 to part 740 of the EAR.

Note to paragraph (b)(2): Commodities, components, and software classified under ECCNs 5A002.b or 5D002.d, for the "cryptographic activation" of commodities or software specified by this paragraph (b)(2) are also controlled under this paragraph (b)(2).

(3) *Classification request required for specified commodities, software, and components.* Thirty (30) days after a classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph authorizes exports, reexports, and transfers (in-country) of the items submitted for classification, as further described in this paragraph (b)(3), to any end user, provided the item does not perform the functions, or otherwise meet the specifications, of any item described in paragraph (b)(2) of this section. Items described in paragraphs (b)(3)(i), (ii), or (iv) of this section that meet the criteria set forth in Note 3 to Category 5—Part 2 of the Commerce Control List (the "mass market" note) are classified under ECCN 5A992.c or 5D992.c following classification by BIS.

Note to introductory text of paragraph (b)(3): Immediately after the classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph also authorizes exports, reexports, transfers (in-country) of the items described in this paragraph (b)(3) to any end user located or headquartered in a country listed in Supplement No. 3 to this part.

(i) *"Components," toolsets, and toolkits.* Specified components classified under ECCN 5A002.a and equivalent or related software classified under ECCN 5D002 not described by paragraph (b)(2) of this section, as follows:

(A) Chips, chipsets, electronic assemblies and field programmable logic devices;

(B) Cryptographic libraries, modules, development kits and toolkits, including for operating systems and cryptographic service providers (CSPs).

(ii) *"Non-standard cryptography" (by items not otherwise described in paragraph (b)(2) of this section.)* Encryption commodities, software and components not described by paragraph (b)(2) of this section, that provide or perform "non-standard cryptography" as defined in part 772 of the EAR.

(iii) *Advanced network vulnerability analysis and digital forensics.* Encryption commodities and software not described by paragraph (b)(2) of this section, that provide or perform vulnerability analysis, network forensics, or computer forensics functions characterized by any of the following:

(A) *Automated network vulnerability analysis and response.* Automated network analysis, visualization, or packet inspection for profiling network flow, network user or client behavior, or network structure/topology and adapting in real-time to the operating environment; *or*

(B) *Digital forensics, including network or computer forensics.* Investigation of data leakage, network breaches, and other malicious intrusion activities through triage of captured digital forensic data for law enforcement purposes or in a similarly rigorous evidentiary manner.

(iv) *"Cryptographic activation" commodities, components, and software.* Commodities, components, and software classified under ECCNs 5A002.b or 5D002.d where the product or cryptographic functionality is not otherwise described in paragraphs (b)(2) or (b)(3)(i) of this section.

(c) *Reexport and transfer (in-country).* Distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the reexport or transfer (in-country) meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b)(2) of this section to "government end users," or for government end uses, within the same country are prohibited, unless otherwise authorized by license or license exception.

(d) *Classification request procedures*—(1) Submission requirements and instructions. To submit a classification request to BIS, you must submit an application to BIS in accordance with the procedures described in §§ 748.1 and 748.3 of the EAR and the instructions in paragraph (r) of Supplement No. 2 to part 748 "Unique Application and Submission Requirements," along with other required information as follows:

(ii) *Technical information submission requirements.* For all submissions of encryption classification requests for items described under paragraph (b)(2) or (b)(3) of this section, you must submit the applicable information described in paragraphs (a) through (d) of Supplement No. 6 to part 742 of the EAR (Technical Questionnaire for Encryption Items). For items eligible for self-classification that are submitted to BIS for classification you may be required to provide BIS this Supplement No. 6 to part 742 information on an as-needed basis, upon request by BIS.

(iii) *Changes in encryption functionality following a previous classification.* A new product encryption classification request (under paragraphs (b)(2) or (b)(3) of this section) is required if a change is made to the cryptographic functionality (*e.g.,* algorithms) or other technical characteristics affecting License Exception ENC eligibility (*e.g.,* encrypted throughput) of the originally classified product. However, a new product classification request is not required when a change involves: the subsequent bundling, patches, upgrades or releases of a product; name changes; or changes to a previously reviewed encryption product where the change is limited to updates of encryption software components where the product is otherwise unchanged.

(2) *Action by BIS.*

(i) [Reserved]

(ii) *For items requiring classification by BIS under paragraphs (b)(2) and (3) of this section.* (A) For classifications that require a thirty (30-day) waiting period, if BIS has not, within thirty days (30 days) from registration in SNAP–R of your complete classification request, informed you that your item is not authorized for License Exception ENC, you may export, reexport, or transfer (in-country) under the applicable provisions of License Exception ENC.

(B) Upon completion of its classification, BIS will issue a Commodity Classification Automated Tracking System (CCATS) to you.

(C) *Hold Without Action (HWA) for classification requests.* BIS may hold your classification request without action if necessary to obtain additional information or for any other reason necessary to ensure an accurate classification. Time on such "hold without action" status shall not be counted towards fulfilling the thirty-day (30-day) processing period specified in this paragraph.

(iii) BIS may require you to supply additional relevant technical information about your encryption item(s) or information that pertains to their eligibility for License Exception ENC at any time, before or after the expiration of the thirty-day (30-day) processing period specified in this paragraph and in paragraphs (b)(2) and (3) of this section. If you do not supply such information within 14 days after receiving a request for it from BIS, BIS may return your classification request(s) without action or otherwise suspend or revoke your eligibility to use License Exception ENC for that item(s). At your request, BIS may grant you up to an additional 14 days to provide the requested information. Any request for such an additional number of days must be made prior to the date by which the information was otherwise due to be provided to BIS, and may be approved if BIS concludes that additional time is necessary.

(e) *Reporting requirements*—(1) *Semiannual reporting requirement.* Semiannual reporting is required for exports to all destinations other than Canada, and for reexports from Canada for items described under paragraphs (b)(2) and (b)(3)(iii) of this section. Certain encryption items and transactions are excluded from this reporting requirement, see paragraph (e)(1)(iii) of this section. For information about what must be included in the report and submission requirements, see paragraphs (e)(1)(i) and (ii) of this section respectively.

(i) *Information required.* Exporters must include for each item, the Commodity Classification Automated Tracking System (CCATS) number and the name of the item(s) exported (or reexported from Canada), and the following information in their reports:

(A) *Distributors or resellers.* For items exported (or reexported from Canada) to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported or reexported and, if collected by the exporter as part of the distribution process, the end user's name and address;

(B) *Direct sales.* For items exported (or reexported from Canada) through direct sale, the name and address of the recipient, the item, and the quantity exported; or

(C) *Foreign manufacturers and products that use encryption items.* For exports (*i.e.,* from the United States) or direct transfers (*e.g.,* by a "U.S. subsidiary" located outside the United States) of encryption components, source code, general purpose toolkits, equipment controlled under ECCN 5B002, technology, or items that provide an "open cryptographic interface," to a foreign developer or manufacturer headquartered in a country not listed in Supplement No. 3 to this part when intended for use in foreign products developed for commercial sale, the names and addresses of the manufacturers using these encryption items and, if known, when the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which these encryption items are being used (*e.g.,* brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(ii) *Submission requirements.* For exports occurring between January 1 and June 30, a report is due no later than August 1 of that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. These reports must be provided in electronic form. Recommended file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BIS to better reflect their business models. Reports may be sent electronically to BIS at *crypt@bis.doc.gov* and to the ENC Encryption Request Coordinator at *enc@nsa.gov,* or disks and CDs containing the reports may be sent to the following addresses:

(A) Department of Commerce, Bureau of Industry and Security, Office of National Security and Technology Transfer Controls, 14th Street and Pennsylvania Ave. NW., Room 2705, Washington, DC 20230, Attn: Encryption Reports, and

(B) Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Ft. Meade, MD 20755–6000.

(iii) *Exclusions from reporting requirement.* Reporting is not required for the following items and transactions:

(A) [Reserved]

(B) Encryption commodities or software with a symmetric key length not exceeding 64 bits;

(C) Encryption items exported (or reexported from Canada) via free and anonymous download;

(D) Encryption items from or to a U.S. bank, financial institution or its subsidiaries, affiliates, customers or contractors for banking or financial operations;

(E) [Reserved]

(F) Foreign products developed by bundling or compiling of source code.

(2) *Key length increases.* Reporting is required for commodities and software that, after having been classified and authorized for License Exception ENC in accordance with paragraphs (b)(2) or (3) of this section, are modified only to upgrade the key length used for confidentiality or key exchange algorithms. Such items may be exported, reexported or transferred (in-country) under the previously authorized provision of License Exception ENC without a classification resubmission.

(i) *Information required.* (A) A certification that no change to the encryption functionality has been made other than to upgrade the key length for confidentiality or key exchange algorithms.

(B) The original Commodity Classification Automated Tracking System (CCATS) authorization number issued by BIS and the date of issuance.

(C) The new key length.

(ii) *Submission requirements.* (A) The report must be received by BIS and the ENC Encryption Request Coordinator before the export, reexport or transfer (in-country) of the upgraded product; and

(B) The report must be emailed to *crypt@bis.doc.gov* and *enc@nsa.gov.*

(3) *Self-classification reporting for certain encryption commodities, software and components.* This paragraph (e)(3) sets forth requirements for self-classification reporting to BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD) of encryption commodities, software and components exported or reexported. This reporting requirement applies to commodities and software that meet the criteria of Note 3 to Category 5—Part 2 of the Commerce Control List (“mass market” note) and are classified under ECCN 5A992.c or 5D992.c following self-classification, as well as to commodities and software that remain classified in ECCNs 5A002, 5B002 or 5D002 following self-classification.

(i) *When to report.* Your self-classification report for applicable encryption commodities, software and components exported or reexported during a calendar year (January 1 through December 31) must be received by BIS and the ENC Encryption Request Coordinator no later than February 1 the following year.

(ii) *How to report.* Encryption self-classification reports must be sent to BIS and the ENC Encryption Request Coordinator via email or regular mail. In your submission, specify the timeframe that your report spans and identify points of contact to whom questions or other inquiries pertaining to the report should be directed. Follow these instructions for your submissions:

(A) *Submissions via email.* Submit your encryption self-classification report electronically to BIS at *crypt-supp8@bis.doc.gov* and to the ENC Encryption Request Coordinator at *enc@nsa.gov,* as an attachment to an email. Identify your email with subject “self-classification report.”

(B) *Submissions on disks and CDs.* The self-classification report may be sent to the following addresses, in lieu of email:

(*1*) Department of Commerce, Bureau of Industry and Security, Office of National Security and Technology Transfer Controls, 14th Street and Pennsylvania Ave. NW., Room 2099B, Washington, DC 20230, Attn: Encryption Reports, and

(*2*) Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Ft. Meade, MD 20755–6000.

(iii) *Information to report.* Your encryption self-classification report must include the information described in paragraph (a) of Supplement No. 8 to part 742 for each applicable encryption commodity, software and component made eligible for export or reexport under § 740.17(b)(1) of the EAR. Each product must be included in a report only one time. However, if no new products are made eligible for export or reexport during a calendar year, you must send an email to the addresses listed in paragraph (e)(3)(ii)(A) of this section stating that nothing has changed since the previous report.

(iv) *File format requirements.* The information described in paragraph (a) of Supplement No. 8 to part 742 must be provided to BIS and the ENC Encryption Request Coordinator in tabular or spreadsheet form, as an electronic file in comma separated values format (.csv) adhering to the specifications set forth in paragraph (b) of Supplement No. 8 to part 742.

Supplement No. 3 to Part 740 [Amended]

■ 16. Supplement No. 3 to part 740 is amended by adding “Croatia” in alphabetical order.

PART 742—[AMENDED]

■ 17. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Public Law 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

§ 742.10 [Amended]

■ 18. Section 742.10 is amended in paragraph (a)(2) by removing the phrase “.5A992, 5D992.b and .c” and adding in its place “5A992.c, 5D992.c”.

■ 19. Section 742.15 is amended by revising paragraphs (a) and (b) and removing paragraphs (c) and (d).

The revisions read as follows:

§ 742.15 Encryption Items.

* * * * *

(a) *Licensing requirements and policy*—(1) *Licensing requirements.* A license is required to export or reexport encryption items (''EI'') classified under ECCN 5A002, 5A004, 5D002.a, .c.1 or .d (for equipment and ''software'' in ECCNs 5A002 or 5A004, 5D002.c.1); or 5E002 for ''technology'' for the ''development,'' ''production,'' or ''use'' of commodities or ''software'' controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002, and ''technology'' classified under 5E002.b to all destinations, except Canada. Refer to part 740 of the EAR, for license exceptions that apply to certain encryption items, and to § 772.1 of the EAR for definitions of encryption items and terms. Most encryption items may be exported under the provisions of License Exception ENC set forth in § 740.17 of the EAR. Following classification or self-classification, items that meet the criteria of Note 3 to Category 5—Part 2 of the Commerce Control List (the ''mass market'' note), are classified ECCN 5A992.c or 5D992.c and are no longer subject to this Section (see § 740.17 of the EAR). Before submitting a license application, please review License Exception ENC to determine whether this license exception is available for your item or transaction. For exports, reexports, or transfers (in-country) of encryption items that are not eligible for a license exception, you must submit an application to obtain authorization under a license or an Encryption Licensing Arrangement.

(2) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export, reexport, or transfer (in-country) is consistent with U.S. national security and foreign policy interests. Encryption Licensing Arrangements (ELAs) may be authorized for exports, reexports, or transfers (in-country) of unlimited quantities of encryption commodities and software described in § 740.17 (b)(2)(i)(A) that have been classified by BIS to ''more sensitive government end users,'' in all destinations, except countries listed in Country Groups E:1 or E:2 of Supplement No. 1 to part 740. ELAs for ''more sensitive government end users'' may be authorized for encryption commodities and software described in § 740.17(b)(2)(ii) through (iv) under certain circumstances. ELAs are valid for four years and may require pre-shipment notification. Applicants seeking authorization for Encryption Licensing Arrangements must specify the sales territory on their license applications.

(b) *Publicly available encryption source code*—(1) *Scope and eligibility.* Subject to the notification requirements of paragraph (b)(2) of this section, publicly available (see § 734.3(b)(3) of the EAR) encryption source code classified under ECCN 5D002 is not subject to the EAR. Such source code is publicly available even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code.

(2) *Notification requirement.* You must notify BIS and the ENC Encryption Request Coordinator via email of the Internet location (*e.g.,* URL or Internet address) of the publicly available encryption source code classified under ECCN 5D002 or provide each of them a copy of the publicly available encryption source code. If you update or modify the source code, you must also provide additional copies to each of them each time the cryptographic functionality of the source code is updated or modified. In addition, if you posted the source code on the Internet, you must notify BIS and the ENC Encryption Request Coordinator each time the Internet location is changed, but you are not required to notify them of updates or modifications made to the encryption source code at the previously notified location. In all instances, submit the notification or copy to *crypt@bis.doc.gov* and to *enc@nsa.gov.*

Supplement No. 5 to Part 742 [Removed and Reserved]

■ 20. Part 742 is amended by removing and reserving Supplement No. 5.

■ 21. Supplement No. 6 is amended by:

■ a. Revising the heading of the Supplement;

■ b. Revising paragraphs (a) introductory text, (a)(2), (b) introductory text, (b)(2) and (3), (b)(6) and (7), and (b)(9) through (12);

■ c. Adding paragraph (b)(13) and (14); and

■ d. Revising paragraph (d)(1).

The revisions and additions read as follows:

Supplement No. 6 to Part 742—Technical Questionnaire for Encryption and Other ''Information Security'' Items

(a) For all items:

* * * * *

(2) Indicate whether there have been any prior classifications of the product(s), if they are applicable to the current submission. For products with minor changes in encryption functionality, you must include a cover sheet with complete reference to the previous review (Commodity Classification Automated Tracking System (CCATS) number, Export Control Classification Number (ECCN), authorization paragraph) along with a clear description of the changes.

* * * * *

(b) For classification requests and other submissions, provide the following information:

* * * * *

(2) Describe how encryption keys are generated or managed by your product, including algorithms and modulus sizes supported.

(3) Describe whether the products incorporate or use ''non-standard cryptography'' defined as incorporating or using proprietary, unpublished cryptographic functionality, including encryption algorithms or protocols that have not been adopted or approved by a duly recognized international standards body. Provide a textual description and the source code of the algorithm.

* * * * *

(6) State all communication protocols (*e.g.,* X.25, Telnet, TCP, IEEE 802.11, IEEE 802.16, SIP . . .) and cryptographic protocols and methods (*e.g.,* SSL, TLS, SSH, IPSEC, IKE, SRTP, ECC, MD5, SHA, X.509, PKCS standards . . .), including application programming interfaces (APIs), that are supported and describe how they are used.

(7) State how the product is written to preclude user modification of the encryption algorithms, key management and key space.

* * * * *

(9) Identify the version(s) and type(s) of compilers, runtime interpreters or code assemblers used, as applicable.

(10) With respect to your company's encryption products, are any of the products (or its encryption components) manufactured outside the United States? If yes, provide manufacturing locations (city and country).

(11) See § 740.17(b)(2) of the EAR. Describe whether the item meets any of the § 740.17(b)(2) criteria. Provide a comparison of your item against the criteria listed in each paragraph of § 740.17(b)(2). Give specific data for each of the parameters listed, as applicable (*e.g.,* maximum aggregate encrypted throughput, maximum number of encrypted endpoints, maximum satellite or terrestrial wireless transmission rates, terrestrial wireless operating range, customized cryptography, network penetration capability, cryptanalytic capability and ''non-standard cryptography'').

(12) See § 740.17(b)(3) of the EAR. Describe whether the product meets any of the criteria described under each of the paragraphs in § 740.17(b)(3) (*e.g.,* chip, chipset, electronic assembly, programmable logic device, cryptographic library, cryptographic development kit, ''non-standard cryptography,'' digital forensics, and ''cryptographic activation'').

(13) See § 740.17(b)(2)(iii) of the EAR. For products which incorporate an ''open cryptographic interface'' as defined in part 772 of the EAR, describe the cryptographic interface.

(14) For products with IPsec capabilities:

(i) Please describe your product's implementation of IKE vendor IDs, including vendor specific and capability IDs; and

(ii) Please specify which version of IKE you use (IKEv1 or IKEv2).

* * * * *

(d) * * *

(1) If applicable, reference the executable (object code) product that was previously classified by BIS;

* * * * *

■ 22. Supplement No. 8 to part 742 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraphs (a) introductory text, (a)(5) introductory text, and (a)(6);

■ c. Adding paragraphs (a)(7) through (12);

■ d. Revising paragraphs (b)(2) and (3) and (c)(1); and

■ e. Adding paragraph (c)(4).

The revisions and additions read as follows:

Supplement No. 8 to Part 742—Self-Classification Report for Encryption Items

This supplement provides certain instructions and requirements for self-classification reporting to BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD) of encryption commodities, software and components exported or reexported pursuant to § 740.17(b)(1) of the EAR. See § 740.17(e)(3) of the EAR for additional instructions and requirements pertaining to this supplement, including when to report and how to report.

(a) *Information to report.* The following information is required in the file format as described in paragraph (b) of this supplement, for each encryption item subject to the requirements of this supplement and §§ 740.17(b)(1) and 740.17(e)(3) of the EAR:

* * * * *

(5) Encryption authorization type identifier, selected from *one* of the following, which denote eligibility under License Exception ENC § 740.17(b)(1):

* * * * *

(6) Item type descriptor, selected from one of the following:

(i) Access point;
(ii) Cellular;
(iii) Computer or computing platforms;
(iv) Computer forensics;
(v) Cryptographic accelerator;
(vi) Data backup and recovery;
(vii) Database;
(viii) Disk/drive encryption;
(ix) Distributed computing;
(x) Email communications;
(xi) Fax communications;
(xii) File encryption;
(xiii) Firewall;
(xiv) Gateway;
(xv) Intrusion detection;
(xvi) Identity management;
(xvii) Key exchange;
(xviii) Key management;
(xix) Key storage;
(xx) Link encryption;
(xxi) Local area networking (LAN);
(xxii) Metropolitan area networking (MAN);
(xxiii) Mobility and mobile applications n.e.s.;
(xxiv) Modem;
(xxv) Multimedia n.e.s.;
(xxvi) Network convergence or infrastructure n.e.s.;
(xxvii) Network forensics;
(xxviii) Network intelligence;
(xxix) Network or systems management (OAM/OAM&P);
(xxx) Network security monitoring;
(xxxi) Network vulnerability and penetration testing;
(xxxii) Operating system;
(xxxiii) Optical networking;
(xxxiv) Radio communications;
(xxxv) Router;
(xxxvi) Satellite communications;
(xxxvii) Short range wireless n.e.s.;
(xxxviii) Storage Area Networking (SAN);
(xxxix) 3G/4G/5G/LTE/WiMAX;
(xl) Trusted computing;
(xli) Videoconferencing;
(xlii) Virtual private networking (VPN);
(xliii) Voice communications n.e.s.;
(xliv) Voice over Internet Protocol (VoIP);
(xlv) Wide Area Networking (WAN);
(xlvi) Wireless Local Area Networking (WLAN);
(xlvii) Wireless Personal Area Networking (WPAN);
(xlviii) Test equipment n.e.s.; or
(xlix) Other (please specify).

(7) Name of company or individual submitting the report (50 characters or less).

(8) Telephone number (50 characters or less).

(9) Email address (50 characters or less).

(10) Mailing address (50 characters or less).

(11) With respect to your company's encryption products, do they incorporate encryption components produced or furnished by non-U.S. sources or vendors? Enter 'YES', 'NO', or if necessary, 'N/A' (250 characters or less).

(12) With respect to your company's encryption products, are any of them manufactured in non-U.S. locations?" If yes, list the non-U.S. manufacturing locations by city and country. If necessary, enter 'NONE' or 'N/A' (250 characters or less).

(b) * * *

(2) Each line of your encryption self-classification report (.csv file) must consist of twelve entries as further described in this supplement.

(3) The first line of the .csv file must consist of the following twelve entries (*i.e.*, match the following) without alteration or variation: PRODUCT NAME, MODEL NUMBER, MANUFACTURER, ECCN, AUTHORIZATION TYPE, ITEM TYPE, SUBMITTER NAME, TELEPHONE NUMBER, E-MAIL ADDRESS, MAILING ADDRESS, NON-U.S. COMPONENTS, NON-U.S. MANUFACTURING LOCATIONS.

Note to paragraph (b)(3): These first twelve entries (*i.e.*, first row) of an encryption self-classification report in .csv format correspond to the twelve column headers of a spreadsheet data file. The responses provided under column headers 7 through 12 (SUBMITTER NAME through NON-U.S. MANUFACTURING LOCATIONS) relate to the company as a whole, and thus should be entered the same for each product (*i.e.*, only one point of contact, one 'YES' or 'NO' answer to whether any of the reported products incorporate non-U.S. sourced encryption components, and one list of non-U.S. manufacturing locations, is required for the report). However, even though the information is the same for each product, please duplicate this information into each row of the spreadsheet, leaving no entry blank, so each product has the same identifying company information.

* * * * *

(c) *Other instructions.* (1) The information provided in accordance with this supplement and §§ 740.17(b)(1) and 740.17(e)(3) of the EAR must identify product offerings as they are typically distinguished in inventory, catalogs, marketing brochures and other promotional materials.

* * * * *

(4) Only products self-classified by the exporter or reexporter must be reported. Products submitted for classification by the Bureau of Industry and Security for which a CCATS is issued do not need to be reported.

PART 743—[AMENDED]

■ 23. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 24. Section 743.2 is amended by revising paragraph (b) to read as follows:

§ 743.2 High performance computers: Post shipment verification reporting.

* * * * *

(b) *Requirement.* Exporters must file post-shipment reports and keep records in accordance with recordkeeping requirements in part 762 of the EAR for high performance computer exports to destinations in Computer Tier 3, as well as, exports of commodities used to enhance computers previously exported or reexported to Computer Tier 3 destinations, where the "Adjusted Peak Performance" ("APP") is greater than that listed in ECCN 4A003.b in the Commerce Control List, Supplement No. 1 to part 774 of the EAR.

* * * * *

PART 744—[AMENDED]

■ 25. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.

208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 4 to Part 744 [Amended]

■ 26. Supplement No. 4 to part 744 is amended by removing the reference "5D002 or 5A002." and adding in its place "5A002, 5A004 or 5D002." in the third column "License Requirement," in the entry for Ecuador.

PART 748—[AMENDED]

■ 27. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 28. Section 748.1 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 748.1 General provisions.

(a) *Scope.* In this part, references to the Export Administration Regulations or EAR are references to 15 CFR chapter VII, subchapter C. The provisions of this part involve requests for classifications and advisory opinions, export license applications, reexport license applications, and certain license exception notices subject to the EAR. All terms, conditions, provisions, and instructions, including the applicant and consignee certifications, contained in electronic or paper form(s) are incorporated as part of the EAR. For the purposes of this part, the term "application" refers to both electronic applications and the Form BIS–748P: Multipurpose Application.

* * * * *

(d) *Electronic filing required.* All export and reexport license applications (other than Special Iraq Reconstruction License applications), License Exception AGR notifications, requests to authorize use of License Exception STA for "600 series" end items (which are currently submitted as export license applications) and classification requests and their accompanying documents must be filed via BIS's Simplified Network Application Processing system (SNAP–R), unless BIS authorizes submission via the paper forms BIS 748–P (Multipurpose Application Form), BIS–748P–A (Item Appendix) and BIS–748P–B, (End-User Appendix). Only original paper forms may be used. Facsimiles or reproductions are not acceptable.

■ 29. Section 748.3 is amended by revising the section heading, the last sentence in paragraph (a), and paragraph (d) to read as follows:

§ 748.3 Classification requests and advisory opinions.

(a) * * * The encryption provisions in the EAR require the submission of a classification request in accordance with § 740.17(d) of the EAR in order for certain items to be eligible for export and reexport under License Exception ENC (see § 740.17 of the EAR) or to be released from "EI" controls (see §§ 740.17(b)(2) and 740.17(b)(3) of the EAR).

(d) *Classification requests for encryption items.* A classification request associated with encryption items transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date may be required to determine eligibility under License Exception ENC or for release from "EI" controls. Refer to Supplement No. 6 to part 742 of the EAR for a complete list of technical information that is required for encryption classification requests. Refer to § 740.17(e)(3) and Supplement No. 8 to part 742 of the EAR for information that is required to be submitted in a self-classification report. Refer to § 740.17(b) of the EAR for instructions regarding mass market encryption commodities and software, including self-classifications and classification requests. Refer to § 740.17 of the EAR for the provisions of License Exception ENC, including encryption self-classifications, classification requests and sales reporting. All classification requests, notifications and reports submitted to BIS pursuant to §§ 740.17 and 742.15(b) of the EAR will be reviewed by the ENC Encryption Request Coordinator, Ft. Meade, MD.

* * * * *

■ 30. Section 748.7 is amended by revising paragraphs (a) and (d) to read as follows:

§ 748.7 Registering for electronic submission of license applications and related documents.

(a) *Scope.* This section describes the procedures for registering to submit electronic documents to BIS. The procedures in this section apply to submission of export and reexport license applications (other than Special Iraq Reconstruction Licenses), classification requests, and License Exception AGR notifications.

* * * * *

(d) *Role of individual users.* An individual user may submit to BIS export and reexport license applications (other than Special Iraq Reconstruction Licenses), classification requests, and License Exception AGR notifications.

* * * * *

§ 748.8 [Amended]

■ 31. Section 748.8 is amended in paragraph (r) by removing the phrase "and encryption registrations" and removing and reserving paragraphs (s) and (t).

■ 32. Section 748.9 is amended by revising paragraph (c)(1)(viii) to read as follows:

§ 748.9 Support documents for evaluation of foreign parties in license applications.

* * * * *

(c) * * *

(1) * * *

(viii) The license application is submitted for encryption commodities controlled under ECCN 5A002, 5A004 or 5B002.

* * * * *

■ 33. Supplement No. 1 to Part 748 is amended by revising the Block 5 paragraph to read as follows:

Supplement No. 1 to Part 748—Bis–748P, Bis–748P–A: Item Appendix, and Bis–748P–B: End-User Appendix; Multipurpose Application Instructions

* * * * *

Block 5: Type of Application. *Export.* If the items are located within the United States, and you wish to export those items, mark the Box labeled "Export" with an (X). Reexport. If the items are located outside the United States, mark the Box labeled "Reexport" with an (X).

Classification. If you are requesting BIS to classify your item against the Commerce Control List (CCL), mark the Box labeled "Classification Request" with an (X). If you are submitting a License Exception STA eligibility request pursuant to § 740.20(g), mark the box labeled "Export" with an (X) and then proceed to Block 6 of this supplement for instructions specific to such requests.

* * * * *

■ 34. Supplement No. 2 to part 748 is amended by:

■ a. Revising paragraph (r) introductory text;

■ b. Removing and reserving paragraph (r)(1);

■ c. Revising paragraph (r)(2)(ii)(B)(*2*);

■ d. Removing paragraph (r)(2)(iii); and

■ e. Removing and reserving paragraphs (s) and (t).

The revisions read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(r) *Encryption classification requests.* Failure to follow the instructions in this paragraph may delay consideration of your encryption classification request.

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(*2*) "Mass market encryption" if you are submitting an encryption classification request for certain mass market encryption items (§ 740.17(b) of the EAR).

* * * * *

Supplement No. 7 to Part 748 [Amended]

■ 35. Supplement No. 7 to part 748 is amended by removing the reference to 3B001.c in the third column "Eligible items (by ECCN)," in the following entries under China (People's Republic of):

■ a. Advanced Micro-Fabrication Equipment, Inc., China (two places);

■ b. Applied Materials (China), Inc., in destinations identified by both one asterisk (*) and two asterisks (**) (two places)

■ c. Lam Research Service Co., Ltd, in Destinations Identified by both a single asterisk (*), (in two places) and by two asterisks (**), (two places)

■ d. Samsung China Semiconductor Co. Ltd;

■ e. Semiconductor Manufacturing International Corporation;

■ f. Shanghai Huahong Grace Semiconductor Manufacturing Corporation;

■ g. SK hynix Semiconductor (China) Ltd; and

■ h. SK hynix Semiconductor (Wuxi) Ltd.

■ 36. Supplement No. 7 to part 748 is further amended by removing the phrase "ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of Section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of Section 742.15 of the EAR)." and adding in its place "ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (3) of § 740.17 of the EAR)." for "Semiconductor Manufacturing International Corporation" under China (People's Republic of).

■ 37. Supplement No. 7 to part 748 is further amended by removing "(limited to production technology for integrated circuits controlled by ECCNs 5A002 or 5A992 that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) and 742.15 of the EAR)" and adding in its place "(controlled by ECCNs 5A002, 5A004, or 5A992 that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) of the EAR)" in the third column "Eligible items (by ECCN)" for "Shanghai Huahong Grace Semiconductor Manufacturing Corporation" under China (People's Republic of).

PART 770—[AMENDED]

■ 38. The authority citation for part 770 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 39. Section 770.2 is amended by revising paragraphs (l) and (m) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(l) *Interpretation 12: Computers.* (1) Digital computers or computer systems classified under ECCN 4A003.b or .c, that qualify for "No License Required" (NLR) must be evaluated on the basis of Adjusted Peak Performance (APP) alone, to the exclusion of all other technical parameters. Digital computers or computer systems classified under ECCN 4A003.b or .c that qualify for License Exception APP must be evaluated on the basis of APP, to the exclusion of all other technical parameters. Assemblies performing analog-to-digital conversions are evaluated under Category 3—Electronics, ECCN 3A002.h.

(2) Related equipment classified under ECCN 4A003.g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, NLR or License Exception APP is available for the computer system and the related equipment, as appropriate.

* * * * *

(m) *Interpretation 13: Encryption commodities and software controlled for EI reasons.* Encryption commodities and software controlled for EI reasons under ECCNs 5A002, 5A004 and 5D002 may be pre-loaded on a laptop, handheld device or other computer or equipment and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. Neither License Exception TMP nor License Exception BAG contains a reporting requirement. Like other "information security" "software," components, "electronic assemblies" or modules, the control status of encryption commodities and software is determined in Category 5—Part 2 even if they are bundled, commingled or incorporated in a computer or other equipment. However, commodities and software specially designed for medical end use that incorporate an item in Category 5—Part 2 are not controlled in Category 5—Part 2. See paragraph (a) of Supplement No. 3 to part 774 (Statements of Understanding) of the EAR.

PART 772—[AMENDED]

■ 40. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 41. Section 772.1 is amended by:

■ a. Revising the terms "Accuracy" and "Airship;"

■ b. Revising the terms "Circular Error Probable," "Cryptography," and "FADEC;"

■ c. Removing the term "Fixed;"

■ d. Revising the terms "Frequency switching time" and "Full Authority Digital Engine Control Systems;"

■ e. Revising the term "Government end users (as applied to encryption items);"

■ f. In the definition of "Information security," removing "(Cat 4, 5P1, 5P2, 8, GSN)" and adding in its place "(Cat 5P2, GSIN, GSN)";

■ g. Revising the term "Laser;"

■ h. Adding in alphabetical order the terms "Less sensitive government end users (applied to encryption items)," "Lighter-than-air vehicles," and "More sensitive government end users (applied to encryption items);"

■ i. Removing the term "Optical amplification;"

■ j. Revising the term "Publicly available encryption software;"

■ k. Adding in alphabetical order the term "Pyrotechnic(s);"

■ l. Revising the term "Source code;" and

■ m. Removing the term "System tracks."

The revisions and additions read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Accuracy. (Cat 2, 3, 6, 7 and 8)—"Accuracy" is usually measured in terms of inaccuracy. It is defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

* * * * *

Airship. (Cat 2 and 9) A power-driven airborne vehicle that is kept buoyant by a body of gas (usually helium, formerly hydrogen) which is lighter than air.

* * * * *

Circular Error Probable. ("CEP") (Cat 7) In a circular normal distribution, the radius of the circle containing 50% of the individual measurements being made, or the radius of the circle within which there is a 50% probability of being located.

* * * * *

Cryptography. (Cat 5P2)—The discipline that embodies principles, means and methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorized use. "Cryptography" is limited to the transformation of information using one or more 'secret parameters' (*e.g.*, crypto variables) and/or associated key management.

Note: "Cryptography" does not include 'fixed' data compression or coding techniques.

Technical Notes:

1. 'Secret parameter': a constant or key kept from the knowledge of others or shared only within a group.

2. 'Fixed': the coding or compression algorithm cannot accept externally supplied parameters (*e.g.*, cryptographic or key variables) and cannot be modified by the user.

* * * * *

FADEC systems. See "full authority digital engine control systems."

* * * * *

Frequency switching time. (Cat 3) The time (*i.e.*, delay) taken by a signal when switched from an initial specified output frequency, to arrive at or within any of the following:

(1) ±100 Hz of a final specified output frequency of less than 1 GHz; *or*

(2) ±0.1 part per million of a final specified output frequency equal to or greater than 1 GHz.

* * * * *

Full Authority Digital Engine Control Systems. ("FADEC Systems") (Cat 9) A digital electronic control system for a gas turbine engine that is able to autonomously control the engine throughout its whole operating range from demanded engine start until demanded engine shut down, in both normal and fault conditions.

* * * * *

Government end user" (as applied to encryption items). A government end user is any foreign central, regional or local government department, agency, or other entity performing governmental functions; including governmental research institutions, governmental corporations or their separate business units (as defined in part 772 of the EAR) which are engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List, and international governmental organizations. This term does not include: Utilities (including telecommunications companies and Internet service providers); banks and financial institutions; transportation; broadcast or entertainment; educational organizations (except public schools and universities); civil health and medical organizations (including public civilian hospitals); retail or wholesale firms; and manufacturing or industrial entities not engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List.

* * * * *

Laser. (Cat 1, 2, 3, 5P1, 6, 7, 8 and 9)—An item that produces spatially and temporally coherent light through amplification by stimulated emission of radiation. See also: "Chemical laser;" "Super High Power Laser;" and "Transfer laser."

Less sensitive government end users (as applied to encryption items). The following "government end users" (as defined in this Section of the EAR) are considered "less sensitive" for the purposes of License Exception ENC (§ 740.17 of the EAR):

(1) Local/state/provincial "government end users" (departments, agencies and entities), including local/state/provincial executive, legislative, judicial, police, fire, rescue and public safety agencies.

(2) National/federal/royal "government end users" (departments, agencies and entities) providing the following civil government functions and services:

(i) Census and statistics services;

(ii) Civil public works infrastructure services (construction, maintenance, repair, regulation and administration) as follows: Buildings, public transportation, roads and highways, trucking;

(iii) Civil service administration and regulation, including human resources and personnel/labor management;

(iv) Clean water infrastructure services (treatment, supply and testing);

(v) Economic (trade/commerce/investment), business and industrial development, promotion, regulation and administration, excluding the following end users/end uses:

(A) Agencies, departments, boards and councils for science and technology;

(B) Research, development and national laboratories (other than as specified in paragraphs (2)(xi) (measurements and standards services) and (2)(xii) (meteorology/weather/atmospheric services) of this definition (below);

(C) National telecommunications and information technology agencies, boards, councils and development authorities (including national information center, and Information Communications Technology (ICT)/telecommunications infrastructure/spectrum planning, policy, regulation and testing);

(vi) Elections, balloting and polling services;

(vii) Energy regulation and administration, including oil, gas and mining sectors;

(viii) Environmental/natural resources regulation, administration and protection, including wildlife, fisheries and national parks;

(ix) Food/agriculture regulation and administration;

(x) Labor/community/social services planning, regulation and administration, including: housing and urban development, municipality and rural affairs;

(xi) Measurements and standards services;

(xii) Meteorology (weather, atmospheric) services;

(xiii) National archives/museums;

(xiv) Patents;

(xv) Pilgrimage and religious affairs;

(xvi) Postal services;

(xvii) Public and higher education (excluding government research institutions and any agency, institution or affiliate engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List);

(xviii) Public health and medicine/pharmaceutical regulation and administration;

(xix) Public libraries;

(xx) Sports/culture (includes film, commercial broadcasting and the arts) promotion, regulation and administration;

(xxi) Travel/tourism promotion, regulation and administration.

* * * * *

Lighter-than-air vehicles. (Cat 2 and 9) Balloons and "airships" that rely on hot air or on lighter-than-air gases such as helium or hydrogen for their lift.

* * * * *

More sensitive government end users (as applied to encryption items). The following national/federal/royal (departments, agencies and entities) "government end users" (as defined in this section of the EAR) providing the following government functions and services, are considered "more sensitive:"

(1) Agencies, departments, boards and councils for science and technology (including research, development and state/national laboratories, but not including measurements and standards);

(2) Currency and monetary authorities (including departments and offices of the national/federal/royal reserve);

(3) Executive agents of state (including offices of president/vice president/prime minister, royal courts, national security councils, cabinet/council of ministers/supreme councils/executive councils, crown princes and other deputies of the rulers, departments and offices of political/constitutional/mainland affairs);

(4) Legislative bodies responsible for the enactment of laws;

(5) Import/export control, customs and immigration agencies and entities;

(6) Intelligence agencies and entities;

(7) Judiciary (including supreme courts and other national/federal/regional/royal high courts and tribunals);

(8) Maritime, port, railway and airport authorities;

(9) Military and armed services (including national guard, coast guard, security bureaus and paramilitary);

(10) Ministries, departments and garrisons of defense (including defense technology agencies);

(11) Ministries and departments of finance and taxation (including national/federal/royal budget and revenue authorities);

(12) Ministries and departments of foreign affairs/foreign relations/consulates/embassies;

(13) Ministries of interior, internal/home/mainland affairs, and homeland security;

(14) State/national telecommunications and information technology agencies, boards, councils and development authorities (including national information/critical infrastructure data centers, and Information and Communications Technology (ICT)/telecommunications infrastructure/spectrum planning, policy, regulation and testing);

(15) Police, investigation and other law enforcement agencies and entities (including digital crime/cybercrime/computer forensics, counter narcotics/counter terrorism/counter proliferation agencies);

(16) Prisons;

(17) Public safety agencies and entities (including national/federal/royal agencies and departments of civil defense, emergency management, and first responders).

* * * * *

Publicly available encryption software. See § 742.15(b) of the EAR.

* * * * *

Pyrotechnic(s). (Cat 1) Mixtures of solid or liquid fuels and oxidizers which, when ignited, undergo an energetic chemical reaction at a controlled rate intended to produce specific time delays, or quantities of heat, noise, smoke, visible light or infrared radiation. Pyrophorics are a subclass of pyrotechnics, which contain no oxidizers but ignite spontaneously on contact with air.

* * * * *

Source code (or source language). (Cat 1, 4, 5P2, 6, 7, and 9)—A convenient expression of one or more processes that may be turned by a programming system into equipment executable form ("object code" (or object language)).

* * * * *

PART 774—[AMENDED]

■ 42. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 43. Section 774.1 is amended by adding paragraph (e) to read as follows:

§ 774.1 Introduction.

* * * * *

(e) *Chemicals identified by Chemical Abstracts Service (CAS) number.* In some instances chemicals are listed by name and CAS number. The list applies to chemicals of the same structural formula (including hydrates) regardless of name or CAS number. CAS numbers are shown to assist in identifying a particular chemical or mixture, irrespective of nomenclature. CAS numbers cannot be used as unique identifiers because some forms of the listed chemical have different CAS numbers, and mixtures containing a listed chemical may also have different CAS numbers.

Supplement No. 1 to Part 774 [Amended]

■ 44. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 0, ECCN 0A617 is amended by adding double quotes around the term "laser" in paragraph (8) of the Related Controls paragraph in the List of Items Controlled section.

■ 45. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A001 is amended by removing and reserving paragraph b and removing paragraph c from the Items paragraph of the List of Items Controlled section.

■ 46. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A002 is amended by adding double quotes around the term "composite" in the introductory text of Note 1 following Items paragraph b.2 of the List of Items Controlled section.

■ 47. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A004, Items paragraph of the List of Items controlled is amended by revising paragraphs a.1, b.1, and c.1 and the Technical Notes at the end of the Items paragraph to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1A004 Protective and detection equipment and "components," not "specially designed" for military use, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.1. 'Biological agents';

* * * * *

b. * * *

b.1. 'Biological agents';

* * * * *

c. * * *

c.1. 'Biological agents';

* * * * *

Technical Notes:

1. 1A004 includes equipment, "components" that have been 'identified,' successfully tested to national standards or otherwise proven effective, for the detection of or defense against radioactive materials "adapted for use in war," 'biological agents,' chemical warfare agents, 'simulants' or "riot control agents," even if such equipment or "components" are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.

2. 'Simulant': A substance or material that is used in place of toxic agent (chemical or biological) in training, research, testing or evaluation.

3. For the purposes of 1A004, 'biological agents' are pathogens or toxins, selected or modified (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) to produce casualties in humans or animals, degrade equipment or damage crops or the environment.

■ 48. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A613, Items paragraph of the List of Items controlled is amended by revising paragraph c and adding a Nota Bene after paragraph y.1 to read as follows:

1A613 Armored and protective "equipment" and related commodities, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. Military helmets (other than helmets controlled under 1A613.y.1) providing less than NIJ Type IV protection and "specially designed" helmet shells, liners, or comfort pads therefor.

Note 1: See ECCN 0A979 for controls on police helmets.

Note 2: See USML Category X(a)(5) and (a)(6) for controls on other military helmets.

* * * * *

y. * * *

y.1 * * *

N.B. to paragraph y.1: For other military helmet "components" or "accessories," see the relevant ECCN in the CCL or USML Entry.

* * * * *

■ 49. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C001, the List of Items Controlled section, the Items paragraph is amended by adding double quotes around the term "laser" in paragraphs (a) and (b) of the Note to 1C001.b.

■ 50. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C002, the List of Items Controlled section is amended by revising the Note at the beginning of the Items paragraph to read as follows:

1C002 Metal alloys, metal alloy powder and alloyed materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

Note: 1C002 does not control metal alloys, metal alloy powder and alloyed materials, specially formulated for coating purposes.

* * * * *

■ 51. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C006, the List of Items Controlled section, the Items paragraph is amended by removing and reserving paragraph .a (including the subparagraphs through a.2.e and the Technical Note for 1C006.a.2).

■ 52. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C008, the List of Items Controlled section is amended by revising the Technical Notes at the end of the Items paragraph to read as follows:

1C008 Non-fluorinated polymeric substances as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

Technical Notes:

1. The 'glass transition temperature (Tg)' for 1C008.a.2 thermoplastic materials, 1C008.a.4 materials and 1C008.f materials is determined using the method described in ISO 11357–2 (1999) or national equivalents.

2. The 'glass transition temperature (Tg)' for 1C008.a.2 thermosetting materials and 1C008.a.3 materials is determined using the 3-point bend method described in ASTM D 7028–07 or equivalent national standard. The test is to be performed using a dry test specimen which has attained a minimum of 90% degree of cure as specified by ASTM E 2160–04 or equivalent national standard, and was cured using the combination of standard- and post-cure processes that yield the highest Tg.

■ 53. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C009, List of Items Controlled section, the Items paragraph is amended by removing and reserving paragraph a.

■ 54. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C608 is amended by:

■ a. Revising the Related Definitions paragraph in the List of Items Controlled section; and

■ b. Revising the Items paragraph of the List of Items Controlled section.

The revisions read as follows:

1C608 Energetic materials and related commodities (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Definitions: (1) For purposes of this entry, the term 'controlled materials' means controlled energetic materials enumerated in ECCNs 1C011, 1C111, 1C239, 1C608, or USML Category V. (2) For the purposes of this entry, the term 'propellants' means substances or mixtures that react chemically to produce large volumes of hot gases at controlled rates to perform mechanical work.

Items:

a. 'Single base,' 'double base,' and 'triple base' 'propellants' having nitrocellulose with nitrogen content greater than 12.6% in the form of either:

a.1. 'Sheetstock' or 'carpet rolls;' or

a.2. Grains with diameter greater than 0.10 inches.

Note: This entry does not control 'propellant' grains used in shotgun shells, small arms cartridges, or rifle cartridges.

Technical Notes:

1. 'Sheetstock' is 'propellant' that has been manufactured in the form of a sheet suitable for further processing.

2. A 'carpet roll' is 'propellant' that has been manufactured as a sheet, often cut to a desired width, and subsequently rolled up (like a carpet).

3. 'Single base' is 'propellant' which consists mostly of nitrocellulose.

4.'Double base' 'propellant' consist mostly of nitrocellulose and nitroglycerine.

5. 'Triple base' consists mostly of nitrocellulose, nitroglycerine, and nitroguanidine. Such 'propellants' contain other materials, such as resins or stabilizers, that could include carbon, salts, burn rate modifiers, nitrodiphenylamine, wax, polyethylene glycol (PEG), polyglycol adipate (PGA).

b. Shock tubes containing greater than 0.064 kg per meter (300 grains per foot), but not more than 0.1 kg per meter (470 grains per foot) of 'controlled materials.'

c. Cartridge power devices containing greater than 0.70 kg, but not more than 1.0 kg of 'controlled materials.'

d. Detonators (electric or nonelectric) and "specially designed" assemblies therefor containing greater than 0.01 kg, but not more than 0.1 kg of 'controlled materials.'

e. Igniters not controlled by USML Categories III or IV that contain greater than 0.01 kg, but not more than 0.1 kg of 'controlled materials.'

f. Oil well cartridges containing greater than 0.015 kg, but not more than 0.1 kg of 'controlled materials.'

g. Commercial cast or pressed boosters containing greater than 1.0 kg, but not more than 5.0 kg of 'controlled materials.'

h. Commercial prefabricated slurries and emulsions containing greater than 10 kg and less than or equal to thirty-five percent by weight of USML 'controlled materials.'

i. [Reserved]

j. "Pyrotechnic" devices "specially designed" for commercial purposes (*e.g.*, theatrical stages, motion picture special effects, and fireworks displays), and containing greater than 3.0 kg, but not more than 5.0 kg of 'controlled materials.'

k. Other commercial explosive devices or charges "specially designed" for commercial applications, not controlled by 1C608.c through .g above, containing greater than 1.0 kg, but not more than 5.0 kg of 'controlled materials.'

l. Propyleneimine (2 methylaziridine) (C.A.S. #75–55–8).

m. Any oxidizer or 'mixture' thereof that is a compound composed of fluorine and any of the following: Other halogens, oxygen, or nitrogen.

Note 1 to 1C608.m: Nitrogen trifluoride (NF3)(CAS 7783–54–2) in a gaseous state is controlled under ECCN 1C992 and not under ECCN 1C608.m.

Note 2 to 1C608.m: Chlorine trifluoride (ClF3)(CAS 7790–91–2) is controlled under ECCN 1C111.a.3.f and not under ECCN 1C608.m.

Note 3 to 1C608.m: Oxygen difluoride (OF2) is controlled under USML Category V.d.10 (see 22 CFR 121.1) and not under ECCN 1C608.m.

Note to 1C608.l and m: If a chemical in ECCN 1C608.l or .m is incorporated into a commercial charge or device described in ECCN 1C608.c through .k or in ECCN 1C992, the classification of the commercial charge or device applies to the item.

Technical Note to 1C608.m: 'Mixture' refers to a composition of two or more substances with at least one substance being enumerated in 1C011, 1C111, 1C239, 1C608, USML Category V, or elsewhere on the USML.

n. Any explosives, 'propellants,' oxidizers, "pyrotechnics," fuels, binders, or additives that are "specially designed" for military application and not enumerated or otherwise described in USML Category V or elsewhere on the USML.

■ 55. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1E001 is amended by revising the Heading and the first NS paragraph in the table of the License Requirements section to read as follows:

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A002, 1A003, 1A004, 1A005, 1A006.b, 1A007, 1A008 1A101, 1B (except 1B608, 1B613 or 1B999), or 1C (except 1C355, 1C608, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C995 to 1C999).

License Requirements

* * * * *

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to "technology" for items controlled by 1A002, 1A003, 1A005, 1A006.b, 1A007, 1B001 to 1B003, 1B018, 1C001 to 1C011, or 1C018.	NS Column 1
* * *	* *

* * * * *

■ 56. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1E002 is amended by removing the phrase "contained in aircraft manufacturers' manuals" and adding in its place "contained in "aircraft" manufacturers' manuals" in the Note to 1E002.f.

■ 57. In Supplement No. 1 to Part 774 (the Commerce Control List), the Annex to Category 1 is amended by revising paragraph 48 and adding paragraph 49 to read as follows:

ANNEX to Category 1

List of Explosives (See ECCNs 1A004 and 1A008)

* * * * *

48. Energetic ionic materials melting between 343 K (70°C) and 373 K (100°C) and with detonation velocity exceeding 6,800 m/s or detonation pressure exceeding 18 GPa (180 kbar);

49. BTNEN (Bis(2,2,2-trinitroethyl)-nitramine) (CAS 19836–28–3).

■ 58. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B001 is amended by revising paragraphs a, b.1 and b.2.a in the Items paragraph of the List of Items Controlled section, to read as follows:

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or "composites," which, according to the manufacturer's technical specifications, can be equipped with electronic devices for "numerical control;" as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. Machine tools for turning having two or more axes which can be coordinated simultaneously for "contouring control" having any of the following:

a.1. "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*

a.2. "Unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;

Note 1: 2B001.a does not control turning machines "specially designed" for producing contact lenses, having all of the following:

a. Machine controller limited to using ophthalmic based "software" for part programming data input; *and*

b. No vacuum chucking.

Note 2: 2B001.a does not apply to bar machines (Swissturn), limited to machining only bar feed thru, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm.

b. * * *

b.1. Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control" having any of the following:

b.1.a. "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*

b.1.b. "Unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;

b.2. * * *

b.2.a. "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m;

* * * * *

■ 59. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B006 is amended by:

■ a. Revising the NP Column 1 paragraph in the License Requirements table;

■ b. Revising the Note following the introductory Items paragraph b.1;

■ c. Revising Items paragraph b.1.c in the List of Items Controlled section; and

■ d. Adding double quotes around the term "laser" in the Note to Items paragraph b.2 in the List of Items Controlled section.

The revisions read as follows:

2B006 Dimensional inspection or measuring systems, equipment, and "electronic assemblies," as follows (see List of Items Controlled).

License Requirements

* * * * *

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
* * *	* *
NP applies to those items in 2B006.a and .b that meet or exceed the technical parameters in 2B206.	NP Column 1
* * *	* *

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

b.1. * * *

Note: Interferometer and optical-encoder displacement measuring systems containing a "laser" are only specified by 2B006.b.1.c.

* * * * *

b.1.c. Measuring systems having all of the following:

b.1.c.1. Containing a "laser;"

b.1.c.2. A "resolution" over their full scale of 0.200 nm or less (better); *and*

b.1.c.3. Capable of achieving a "measurement uncertainty" equal to or less (better) than (1.6 + L/2,000) nm (L is the measured length in mm) at any point within a measuring range, when compensated for the refractive index of air and measured over a period of 30 seconds at a temperature of 20±0.01°C; *or*

* * * * *

b.2. * * *

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light (*e.g.,* ''laser'' light) to detect angular displacement of a mirror.

* * * * *

■ 60. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A001 is amended by:

■ a. Revising the Heading;

■ b. Revising Items paragraph a.5.a.2 through a.5.a.5, not including the Technical Note, in the List of Items Controlled section;

■ c. Revising Items introductory paragraph b, not including the Technical Note, and Items paragraph e.1.b, in the List of Items Controlled section; and

■ d. Adding double quotes to the term ''accuracy'' in Items paragraph f.

The revisions read as follows:

3A001 Electronic items as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.5. * * *

* * * * *

a.5.a.2. A resolution of 10 bit or more, but less than 12 bit, with an output rate greater than 500 million words per second;

a.5.a.3. A resolution of 12 bit or more, but less than 14 bit, with an output rate greater than 200 million words per second;

a.5.a.4. A resolution of 14 bit or more, but less than 16 bit, with an output rate greater than 250 million words per second; *or*

a.5.a.5. A resolution of 16 bit or more with an output rate greater than 65 million words per second;

* * * * *

b. Microwave or millimeter wave items, as follows:

* * * * *

e. * * *

e.1. * * *

e.1.b. 'Secondary cells' having an 'energy density' exceeding 350 Wh/kg at 293 K (20 °C);

* * * * *

■ 61. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A002 is amended by:

■ a. Revising the Heading;

■ b. Revising the License Requirements and List Based License Exceptions sections;

■ c. Revising the Related Controls paragraph in the List of Items Controlled section;

■ d. Removing and reserving Items paragraph a.5 of the List of Items Controlled section;

■ e. Adding a Nota Bene (N.B.) under the reserved Items paragraphs a.1 to a.5 of the List of Items Controlled section;

■ f. Revising Items paragraph a.6 of the List of Items Controlled section; and

■ g. Adding Items paragraph h to the List of Items Controlled section.

The additions and revisions read as follows:

3A002 General purpose "electronic assemblies," modules and equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
MT applies to 3A002.h when the parameters in 3A101.a.2.b are met or exceeded.	MT Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: $3000: 3A002.a, .e, .f, and .g
$5000: 3A002.c to .d, and .h (unless controlled for MT);

GBS: Yes, for 3A002.h (unless controlled for MT)

CIV: Yes, for 3A002.h (unless controlled for MT)

* * * * *

List of Items Controlled

Related Controls: See Category XV(e)(9) of the USML for certain ''space-qualified'' atomic frequency standards ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3A101, 3A292, 3A992 and 9A515.x.

* * * * *

Items:

a. * * *

a.1. to a.5. [RESERVED]

N.B.: For waveform digitizers and transient recorders, see 3A002.h.

a.6. Digital data recorders having all of the following:

a.6.a. A sustained 'continuous throughput' of more than 6.4 Gbit/s to disk or solid-state drive memory; *and*

a.6.b. A processor that performs analysis of radio frequency signal data while it is being recorded;

Technical Notes:

1. For recorders with a parallel bus architecture, the 'continuous throughput' rate is the highest word rate multiplied by the number of bits in a word.

2. 'Continuous throughput' is the fastest data rate the instrument can record to disk or solid-state drive memory without the loss of any information while sustaining the input digital data rate or digitizer conversion rate.

* * * * *

h. ''Electronic assemblies,'' modules or equipment, specified to perform all of the following:

h.1. Analog-to-digital conversions meeting any of the following:

h.1.a. A resolution of 8 bit or more, but less than 10 bit, with an input sample rate greater than 1.3 billion samples per second;

h.1.b. A resolution of 10 bit or more, but less than 12 bit, with an input sample rate greater than 1.0 billion samples per second;

h.1.c. A resolution of 12 bit or more, but less than 14 bit, with an input sample rate greater than 1.0 billion samples per second;

h.1.d. A resolution of 14 bit or more but less than 16 bit, with an input sample rate greater than 400 million samples per second; *or*

h.1.e. A resolution of 16 bit or more with an input sample rate greater than 180 million samples per second; *and*

h.2. Any of the following:

h.2.a. Output of digitized data;

h.2.b. Storage of digitized data; *or*

h.2.c. Processing of digitized data;

N.B.: Digital data recorders, oscilloscopes, ''signal analyzers,'' signal generators, network analyzers and microwave test receivers, are specified by 3A002.a.6, 3A002.a.7, 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.

Technical Note: For multiple-channel ''electronic assemblies'' or modules, control status is determined by the highest single-channel specified performance.

Note: 3A002.h includes ADC cards, waveform digitizers, data acquisition cards, signal acquisition boards and transient recorders.

■ 62. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A101 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

3A101 Electronic equipment, devices, "parts" and "components," other than those controlled by 3A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: See also ECCN 3A002.h for controls on analog-to-digital ''electronic assemblies,'' modules or equipment.

* * * * *

■ 63. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A292 is amended by revising the Heading to read as follows:

3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.h, and "specially designed" "parts" and "components" therefor.

* * * * *

■ 64. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3B001 is amended by:

■ a. Revising the CIV paragraph in the List Based License Exceptions section;

■ b. Removing and reserving Items paragraph c in the List of Items Controlled section;

■ c. Revising Items paragraph e.1 in the List of Items Controlled section;

■ d. Removing the word "etch," in Technical Note 1 after Items paragraph e.2;
■ e. Adding a Note to Items paragraph f.2;
■ f. Revising Items paragraph f.3 in the List of Items Controlled section; and
■ g. Adding Items paragraph f.4 in the List of Items Controlled section.

The revisions and additions read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled) and "specially designed" "components" and "accessories" therefor.

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

CIV: Yes for equipment controlled by 3B001.a.1 and a.2.

List of Items Controlled

* * * * *

Items:

* * * * *

e. * * *

e.1. Interfaces for wafer input and output, to which more than two functionally different 'semiconductor process tools' controlled by 3B001.a.1, 3B001.a.2, 3B001.a.3 or 3B001.b are designed to be connected; *and*

* * * * *

f. * * *

f.2. * * *

Note: 3B001.f.2 includes:
—Micro contact printing tools
—Hot embossing tools
—Nano-imprint lithography tools
—Step and flash imprint lithography (S–FIL) tools

f.3. Equipment "specially designed" for mask making having all of the following:

f.3.a. A deflected focused electron beam, ion beam or "laser" beam; *and*

f.3.b. Having any of the following:

f.3.b.1. A Full-Width Half-Maximum (FWHM) spot size smaller than 65 nm and an image placement less than 17 nm (mean + 3 sigma); *or*

f.3.b.2. [Reserved]

f.3.b.3. A second-layer overlay error of less than 23 nm (mean + 3 sigma) on the mask;

f.4. Equipment designed for device processing using direct writing methods, having all of the following:

f.4.a. A deflected focused electron beam; *and*

f.4.b. Having any of the following:

f.4.b.1. A minimum beam size equal to or smaller than 15 nm; *or*

f.4.b.2. An overlay error less than 27 nm (mean + 3 sigma);

* * * * *

■ 65. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3D001 is amended by:
■ a. Revising the Heading;
■ b. Revising the NS paragraph in the License Requirements table; and
■ c. Revising the CIV paragraph in the List Based License Exceptions section, to read as follows:

3D001 "Software" "specially designed" for the "development" or "production" of equipment controlled by 3A001.b to 3A002.h or 3B (except 3B991 and 3B992).

License Requirements

* * * * *

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to "software" for equipment controlled by 3A001.b to 3A001.h, 3A002, and 3B.	NS Column 1
* * *	* *

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

* * * * *

■ 66. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3E002 is amended by:
■ a. Revising the CIV paragraph in the List Based License Exception section;
■ b. Revising the Technical Note after Items paragraph a in the List of Items Controlled section; and
■ c. Revising Items paragraph c, including Notes that follow, to read as follows:

3E002 "Technology" according to the General Technology Note other than that controlled in 3E001 for the "development" or "production" of a "microprocessor microcircuit," "microcomputer microcircuit" and microcontroller microcircuit core, having an arithmetic logic unit with an access width of 32 bits or more and any of the following features or characteristics (see List of Items Controlled).

License Requirements

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: Yes, for deemed exports, as described in § 734.13(a)(2) of the EAR, of "technology" for the "development" or "production" of general purpose microprocessor cores with a vector processor unit with operand length of 64-bit or less, 64-bit floating operations not exceeding 50 GFLOPS, or 16-bit or more floating-point operations not exceeding 50 GMACS (billions of 16-bit fixed-point multiply-accumulate operations per second). License Exception CIV does not apply to ECCN 3E002 technology also required for the development or production of items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E002 technology also controlled under ECCN 3E003.

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

Technical Note: A 'vector processor unit' is a processor element with built-in instructions that perform multiple calculations on floating-point vectors (one-dimensional arrays of 32-bit or larger numbers) simultaneously, having at least one vector arithmetic logic unit and vector registers of at least 32 elements each.

* * * * *

c. Designed to perform more than eight 16-bit fixed-point multiply-accumulate results per cycle (*e.g.*, digital manipulation of analog information that has been previously converted into digital form, also known as digital "signal processing").

Note 1: 3E002 does not control "technology" for multimedia extensions.

Note 2: 3E002 does not control "technology" for the "development" or "production" of microprocessor cores, having all of the following:

a. Using "technology" at or above 0.130 µm; *and*

b. Incorporating multi-layer structures with five or fewer metal layers.

Note 3: 3E002 includes "technology" for digital signal processors and digital array processors.

■ 67. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 is amended by removing Note 3 at the beginning of Category 4.

■ 68. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4A001 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

4A001 Electronic computers and related equipment, having any of the following (see List of Items Controlled), and "electronic assemblies" and "specially designed" "components" therefor.

* * * * *

List of Items Controlled

Related Controls: See also 4A101 and 4A994. Equipment designed or rated for transient ionizing radiation is "subject to the ITAR" (see 22 CFR parts 120 through 130).

* * * * *

■ 69. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4A003 is amended by:
■ a. Removing MT from the Reason for Control paragraph in the License Requirements section;
■ b. Removing the MT paragraph from the License Requirements table;
■ c. Revising the AT paragraph in the License Requirements table;

■ d. Revising the Note in the License Requirements section;
■ e. Revising the List Based License Exceptions sections;
■ f. Removing the last listed item in Note 1 located at the beginning of the Items paragraph in the List of Items Controlled section;
■ g. Revising Items paragraph b in the List of Items Controlled section;
■ h. Revising Note 1 to 4A003.c;
■ i. Removing Items paragraph e and revising the citation of the reserved paragraphs to read ".d to f. [Reserved]";
■ j. Adding a Nota Bene below the reserved paragraphs d to f.

The revisions and additions read as follows:

4A003 "Digital computers," "electronic assemblies," and related equipment therefor, as follows (see List of Items Controlled) and "specially designed" "components" therefor.

License Requirements

* * * * *

Control(s)	Country chart (see Supp. No. 1 to part 738)
* * *	* *
AT applies to entire entry (refer to 4A994 for controls on "digital computers" with a APP > 0.0128 but ≤ 12.5 WT).	AT Column 1

Note: For all destinations, except those countries in Country Group E:1 or E:2 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an "Adjusted Peak Performance" ("APP") not exceeding 12.5 Weighted TeraFLOPS (WT) and for "electronic assemblies" described in 4A003.c that are not capable of exceeding an "Adjusted Peak Performance" ("APP") exceeding 12.5 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: $5000; N/A for 4A003.b and .c.
GBS: Yes, for 4A003.g and "specially designed" "parts" and "components" therefor, exported separately or as part of a system.
APP: Yes, for computers controlled by 4A003.b, and "electronic assemblies" controlled by 4A003.c, to the exclusion of other technical parameters. See § 740.7 of the EAR.
CIV: Yes, for 4A003.g.

List of Items Controlled

* * * * *

Items:

Note 1: 4A003 includes the following:
—'Vector processors' (as defined in Note 7 of the "Technical Note on "Adjusted Peak Performance" ("APP")");
—Array processors;
—Digital signal processors;
—Logic processors;
—Equipment designed for "image enhancement."

* * * * *

b. "Digital computers" having an "Adjusted Peak Performance" ("APP") exceeding 12.5 weighted TeraFLOPS (WT);

c. * * *

Note 1: 4A003.c applies only to "electronic assemblies" and programmable interconnections not exceeding the limit in 4A003.b when shipped as unintegrated "electronic assemblies."

* * * * *

d. to f. [Reserved]

N.B.: For "electronic assemblies," modules or equipment, performing analog-to-digital conversions, see 3A002.h.

* * * * *

■ 70. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4D001 is amended by:
■ a. Removing NP from the Reason for Control paragraph in the License Requirements section;
■ b. Removing the sentence directly below the License Requirements table;
■ c. Revising the TSR paragraph in the List Based License Exceptions section;
■ d. Revising the STA paragraph in the Special Conditions for STA section;
■ e. Revising Items paragraph b.1 in the List of Items Controlled section.

The revisions are set forth below:

4D001 "Software" as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, CC, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 1
CC applies to "software" for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for "software" for the "development" or "production" of commodities with an "Adjusted Peak Performance" ("APP") exceeding 12.5 WT.

* * * * *

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit "software" "specially designed" for the "development" or "production" of equipment specified by ECCN 4A001.a.2 or for the "development" or "production" of "digital computers" having an 'Adjusted Peak Performance' ('APP') exceeding 12.5Weighted TeraFLOPS (WT) to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

b.1. "Digital computers" having an "Adjusted Peak Performance" ("APP") exceeding 6.0 Weighted TeraFLOPS (WT);

* * * * *

■ 71. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4E001, is amended by:
■ a. Removing NP from the Reason for Control paragraph in the License Requirements section;
■ b. Removing the sentence directly below the License Requirements table;
■ c. Revising the TSR paragraph in the List Based License Exceptions section;
■ d. Revising the STA paragraph in the Special Conditions for STA section;
■ e. Revising Items paragraph b.1 in the List of Items Controlled section.

The revisions read as follows:

4E001 "Technology" as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, CC, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 1
MT applies to "technology" for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1
CC applies to "technology" for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1
AT applies to entire entry.	AT Column 1

Reporting Requirements: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (see Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for "technology" for the "development" or "production" of commodities with an "Adjusted Peak Performance" ("APP") exceeding 12.5 WT.

* * * * *

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit "technology" according to the General Technology Note for the "development" or "production" of any of the following equipment or "software": a. Equipment specified by ECCN 4A001.a.2; b. "Digital computers" having an 'Adjusted Peak Performance' ('APP') exceeding 12.5 Weighted TeraFLOPS (WT); or c. "software" specified in the License Exception STA paragraph found in the License Exception section of ECCN 4D001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

b.1. "Digital computers" having an "Adjusted Peak Performance" ("APP") exceeding 6.0 Weighted TeraFLOPS (WT);

* * * * *

■ 72. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1 is amended by removing Nota Bene 2 (N.B.2) from Note 1 at the beginning of Category 5—Part 1 and changing "N.B.1" to read "N.B".

Category 5—Telecommunications and "Information Security"

Part 1—Telecommunications

Notes:

1. * * *

N.B.: For "lasers" "specially designed" for telecommunications equipment or systems, see ECCN 6A005.

* * * * *

■ 73. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5A001 is amended by revising paragraph d in the Items paragraph of the List of Items Controlled section to read as follows:

5A001 Telecommunications systems, equipment, "components" and "accessories," as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. "Electronically steerable phased array antennas" as follows:

d.1. Rated for operation above 31.8 GHz, but not exceeding 57 GHz, and having an Effective Radiated Power (ERP) equal to or greater than +20 dBm (22.15 dBm Effective Isotropic Radiated Power (EIRP));

d.2. Rated for operation above 57 GHz, but not exceeding 66 GHz, and having an ERP equal to or greater than +24 dBm (26.15 dBm EIRP);

d.3. Rated for operation above 66 GHz, but not exceeding 90 GHz, and having an ERP equal to or greater than +20 dBm (22.15 dBm EIRP);

d.4. Rated for operation above 90 GHz;

Note: 5A001.d does not control "electronically steerable phased array antennas" for landing systems with instruments meeting ICAO standards covering Microwave Landing Systems (MLS).

* * * * *

■ 74. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5B001 is amended by removing and reserving paragraph b.2.b and revising paragraph b.4 in the Items paragraph of the List of Items Controlled section to read as follows:

5B001 Telecommunication test, inspection and production equipment, "components" and "accessories," as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

b.4. Radio equipment employing Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024.

■ 75. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5D001 is amended by revising paragraph d.4 in the Items paragraph of the List of Items Controlled section to read as follows:

5D001 "Software" as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. * * *

d.4. Radio equipment employing Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024.

■ 76. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5E001 is amended by:

■ a. Removing and reserving Items paragraph c.2.b of the List of Items Controlled section;

■ b. Revising the Note to Items paragraph c.2.c;

■ c. Revising Items paragraph c.4.a of the List of Items Controlled section to read as follows:

5E001 "Technology" as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. * * *

c.2. * * *

c.2.c. * * *

Note: 5E001.c.2.c applies to "technology" for the "development" or "production" of systems using an optical local oscillator in the receiving side to synchronize with a carrier "laser."

* * * * *

c.4. * * *

c.4.a. Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024; *or*

* * * * *

■ 77. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2 is amended by:

■ a. Removing and reserving Note 1, including the Nota bene, at the beginning of the Category;

■ b. Revising Note 2;

■ c. Revising the introductory text to Note 3;

■ d. Revising the Technical Note below paragraph b.4 in Note 3;

■ e. Revising paragraph 1.b in the Note to the Cryptography Note;

■ f. Revising the Nota Bene to Note 3 (Cryptography Note);

■ g. Revising the introductory text to Note 4; and

■ h. Adding the heading "I. CRYPTOGRAPHIC "INFORMATION SECURITY" following the heading that reads "A. "END ITEMS," "EQUIPMENT," "ACCESSORIES," "ATTACHMENTS," "PARTS," "COMPONENTS," AND "SYSTEMS".

The revisions and additions read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND "INFORMATION SECURITY"

Part 2—"INFORMATION SECURITY"

* * * * *

Note 2: Category 5—Part 2, "information security" products, when accompanying their user for the user's personal use or as tools of trade, are eligible for License Exceptions TMP or BAG, subject to the terms and conditions of these license exceptions.

Note 3: Cryptography Note: ECCNs 5A002, 5A003, 5A004 and 5D002, do not control items as follows:

* * * * *

b. * * *

4. * * *

Technical Note: For the purpose of the Cryptography Note, 'executable software' means "software" in executable form, from an existing hardware component excluded from 5A002, 5A003 or 5A004 by the Cryptography Note.

Note: * * *

Note to the Cryptography Note:

1. * * *

b. The price and information about the main functionality of the item are available before purchase without the need to consult the vendor or supplier. A simple price inquiry is not considered to be a consultation.

2. * * *

N.B. to Note 3 (Cryptography Note): You must submit a classification request or self-classification report to BIS for mass market encryption commodities and software eligible for the Cryptography Note employing a key length greater than 64 bits for the symmetric algorithm (or, for commodities and software not implementing any symmetric algorithms, employing a key length greater than 768 bits for asymmetric algorithms or greater than 128 bits for elliptic curve algorithms) in accordance with the requirements of § 740.17(b) of the EAR in order to be released from the "EI" and "NS" controls of ECCN 5A002 or 5D002.

Note 4: Category 5—Part 2 does not apply to items incorporating or using "cryptography" and meeting all of the following:

* * * * *

A. "END ITEMS," "EQUIPMENT," "ACCESSORIES," "ATTACHMENTS," "PARTS," "COMPONENTS," AND "SYSTEMS"

I. Cryptographic "Information Security"

■ 78. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5A002 is amended by:

■ a. Revising the Heading;

■ b. Revising the License Requirements section;

■ c. Revising the Related Controls paragraph in the List of Items Controlled section; and

■ d. Revising Items paragraph in the List of Items Controlled section.

The revisions read as follows:

5A002 "Information security" systems, equipment and "components," as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1
EI applies to entire entry.	Refer to § 742.15 of the EAR

License Requirements Note: See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating "information security" functionality, and associated "software" and "technology" for the "production" or "development" of such microprocessors.

* * * * *

List of Items Controlled

Related Controls: (1) ECCN 5A002.a controls "components" providing the means or functions necessary for "information security." All such "components" are presumptively "specially designed" and controlled by 5A002.a. (2) See USML Categories XI (including XI(b)) and XIII(b) (including XIII(b)(2)) for controls on systems, equipment, and components described in 5A002.d or .e that are subject to the ITAR. (3) After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption commodities that meet eligibility requirements are released from "EI" and "NS" controls. These commodities are designated 5A992.c.

* * * * *

Items:

a. Systems, equipment and components, for cryptographic "information security," as follows:

N.B.: For the control of Global Navigation Satellite Systems (GNSS) receiving equipment containing or employing decryption, see ECCN 7A005, and for related decryption "software" and "technology" see 7D005 and 7E001.

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication, digital signature, or execution of copy-protected "software," and having any of the following:

Technical Notes:

1. Functions for authentication, digital signature and the execution of copy-protected "software" include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; *or*

Technical Note: In Category 5—Part 2, parity bits are not included in the key length.

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.,* RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.,* Diffie-Hellman over Z/pZ); or

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.,* Diffie-Hellman over an elliptic curve);

a.2. [Reserved]

N.B.: See 5A004.a for items formerly specified in 5A002.a.2.

Note: 5A002.a does not control any of the following:

(a) Smart cards and smart card 'readers/writers' as follows:

(1) A smart card or an electronically readable personal document (*e.g.,* token coin, e-passport) that meets any of the following:

a. The cryptographic capability is restricted for use in equipment or systems, excluded from 5A002, 5A003 or 5A004 by Note 4 in Category 5—Part 2 or entries (b) to (i) of this Note, and cannot be reprogrammed for any other use; *or*

b. Having all of the following:

1. It is specially designed and limited to allow protection of 'personal data' stored within;

2. Has been, or can only be, personalized for public or commercial transactions or individual identification; *and*

3. Where the cryptographic capability is not user-accessible;

Technical Note: 'Personal data' includes any data specific to a particular person or entity, such as the amount of money stored and data necessary for authentication.

(2). 'Readers/writers' specially designed or modified, and limited, for items specified by (a)(1) of this Note;

Technical Note: 'Readers/writers' include equipment that communicates with smart cards or electronically readable documents through a network.

(b) Cryptographic equipment specially designed and limited for banking use or 'money transactions';

Technical Note: 'Money transactions' in 5A002 Note (b) includes the collection and settlement of fares or credit functions.

(c) Portable or mobile radiotelephones for civil use (*e.g.,* for use with commercial civil cellular radio communication systems) that are not capable of transmitting encrypted data directly to another radiotelephone or equipment (other than Radio Access Network (RAN) equipment), nor of passing encrypted data through RAN equipment (*e.g.,* Radio Network Controller (RNC) or Base Station Controller (BSC));

(d) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*i.e.,* a single, unrelayed hop between terminal and home base station) is less than 400 meters according to the manufacturer's specifications;

(e) Portable or mobile radiotelephones and similar client wireless devices for civil use, that implement only published or commercial cryptographic standards (except for anti-piracy functions, which may be non-published) and also meet the provisions of paragraphs a.2. to a.5. of the Cryptography Note (Note 3 in Category 5—Part 2), that have been customized for a specific civil industry application with features that do not affect the cryptographic functionality of these original non-customized devices;

(f) Wireless "personal area network" equipment that implement only published or commercial cryptographic standards and where the cryptographic capability is limited to a nominal operating range not exceeding 30 meters according to the manufacturer's specifications, or not exceeding 100 meters according to the manufacturer's specifications for equipment that cannot interconnect with more than seven devices;

(g) Equipment meeting all of the following:

1. All cryptographic capability specified by 5A002.a meets any of the following:

a. It cannot be used; *or*

b. It can only be made useable by means of "cryptographic activation;" *and*

2. When necessary as determined by the appropriate authority in the exporter's country, details of the equipment are accessible and will be provided to the authority upon request, in order to ascertain compliance with conditions described above;

N.B.1: See 5A002.a for equipment that has undergone "cryptographic activation."

N.B.2: See also 5A002.b, 5D002.d and 5E002.b.

(h) Mobile telecommunications Radio Access Network (RAN) equipment designed for civil use, which also meet the provisions 2. to 5. of part a. of the Cryptography Note (Note 3 in Category 5—Part 2), having an RF output power limited to 0.1W (20 dBm) or less, and supporting 16 or fewer concurrent users;

(i) Routers, switches or relays, where the "information security" functionality is limited to the tasks of "Operations, Administration or Maintenance" ("OAM") implementing only published or commercial cryptographic standards; *or*

(j) General purpose computing equipment or servers, where the "information security" functionality meets all of the following:

1. Uses only published or commercial cryptographic standards; *and*

2. Is any of the following:

a. Integral to a CPU that meets the provisions of Note 3 in Category 5—Part 2;

b. Integral to an operating system that is not specified by 5D002; *or*

c. Limited to "OAM" of the equipment.

b. Designed or modified to enable, by means of "cryptographic activation," an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled;

c. Designed or modified to use or perform "quantum cryptography;"

Technical Note: "Quantum cryptography" is also known as Quantum Key Distribution (QKD).

d. Designed or modified to use cryptographic techniques to generate channelizing codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques and having any of the following:

d.1. A bandwidth exceeding 500 MHz; *or*

d.2. A "fractional bandwidth" of 20% or more;

e. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, not controlled in 5A002.d., including the hopping code for "frequency hopping" systems.

■ 79. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5A992 is amended by removing and reserving Items paragraphs a and b and revising Items paragraph c in the List of Items Controlled section.

The revisions read as follows:

5A992 Equipment not controlled by 5A002 (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items: * * *

c. Commodities classified as mass market encryption commodities in accordance with § 740.17(b) of the EAR.

■ 80. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2 is amended by:

■ a. Adding after ECCN 5A992 the heading "II. NON-CRYPTOGRAPHIC "INFORMATION SECURITY" " and adding ECCN 5A003; and

■ b. Adding after ECCN 5A003 the heading "III. DEFEATING, WEAKENING, OR BYPASSING "INFORMATION SECURITY" " and adding ECCN 5A004.

The additions read as follows:

II. NON-CRYPTOGRAPHIC "INFORMATION SECURITY"

5A003 "Systems," "equipment" and "components," for non-cryptographic "information security," as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 2
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: Yes: $500 for "components." N/A for systems and equipment.
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion;

Note: 5A003.a applies only to physical layer security.

b. "Specially designed" or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards.

II. DEFEATING, WEAKENING, OR BYPASSING "INFORMATION SECURITY"

5A004 "Systems," "equipment" and "components" for defeating, weakening or bypassing "information security," as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1
EI applies to entire entry.	Refer to § 742.15 of the EAR

License Requirements Note: See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating "information security" functionality, and associated "software" and "technology" for the "production" or "development" of such microprocessors.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: Yes: $500 for "components." N/A for systems and equipment.
GBS: N/A
CIV: N/A
ENC: Yes for certain EI controlled commodities, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Related Controls: ECCN 5A004.a controls "components" providing the means or functions necessary for "information security." All such "components" are presumptively "specially designed" and controlled by 5A004.a.
Related Definitions: N/A
Items:

a. Designed or modified to perform 'cryptanalytic functions.'

Note: 5A004.a includes systems or equipment, designed or modified to perform 'cryptanalytic functions' by means of reverse engineering.

Technical Note: 'Cryptanalytic functions' are functions designed to defeat cryptographic mechanisms in order to derive confidential variables or sensitive data, including clear text, passwords or cryptographic keys.

b. [Reserved]

■ 81. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5B002 is amended by revising the Items paragraph in the List of Items Controlled section to read as follows:

5B002 "Information Security" test, inspection and "production" equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Equipment "specially designed" for the "development" or "production" of equipment controlled by 5A002, 5A003, 5A004 or 5B002.b;

b. Measuring equipment "specially designed" to evaluate and validate the "information security" functions of equipment controlled by 5A002, 5A003 or 5A004, or of "software" controlled by 5D002.a or 5D002.c.

■ 82. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5D002 is amended by:

■ a. Adding, as well as revising, EI controls to the License Requirement table in the License Requirements section;

■ b. Removing the EI sentence, including the two Notes, under the License Requirements Note;

■ c. Revising the Related Controls paragraph in the List of Items Controlled Section; and

■ d. Revising Items paragraphs a. and c.1.

The revisions and additions read as follows:

5D002 "Software" as follows (see List of Items Controlled)

License Requirements

Reason for Control: * * *

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
* * *	* *
EI applies to "software" in 5D002.a, c.1 and .d, for commodities or "software" controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002.	See § 742.15 of the EAR *Note: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other "software'; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002*

License Requirements Note: See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating "information security" functionality, and associated "software" and "technology" for the "production" or "development" of such microprocessors.

* * * * *

List of Items Controlled

Related Controls: After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption software that meet eligibility requirements are released from "EI" and "NS" controls. This software is designated as 5D992.c.

* * * * *

Items:

a. "Software" "specially designed" or modified for the "development," "production" or "use" of equipment controlled by 5A002, 5A003 or 5A004, or of "software" controlled by 5D002.c;

* * * * *

c. * * *

c.1. "Software" having the characteristics, or performing or simulating the functions of the equipment, controlled by 5A002, 5A003 or 5A004;

* * * * *

■ 83. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5D992 is amended by removing and reserving Items paragraphs a and b, and revising Items paragraph c in the Items paragraph of the List of Items Controlled section to read as follows:

5D992 "Information Security" "software" not controlled by 5D002 as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. [Reserved]

b. [Reserved]

c. "Software" classified as mass market encryption software in accordance with § 740.17(b) of the EAR.

■ 84. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5E002 is amended by:

■ a. Adding an EI control row to the License Requirements table in the License Requirements section;

■ b. Removing the EI sentence after the License Requirements table in the License Requirements section;

■ c. Revising Note 2 in the License Requirements Notes in the License Requirements section;

■ d. Revising the Related Controls paragraph of the List of Items Controlled section;

■ e. Revising Items paragraph a in the List of Items Controlled section.

The revisions and additions read as follows:

5E002 "Technology" as follows (see List of Items Controlled).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
* * *	* *
EI applies to "technology" in 5E002.a for commodities or "software" controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002, and to "technology" in 5E002.b.	Refer to § 742.15 of the EAR

License Requirements Notes: * * * (2) When a person performs or provides technical assistance that incorporates, or otherwise draws upon, "technology" that was either obtained in the United States or is of US-origin, then a release of the "technology" takes place. Such technical assistance, when rendered with the intent to aid in the "development" or "production" of encryption commodities or software that would be controlled for "EI" reasons under ECCN 5A002, 5A004 or 5D002, may require authorization under the EAR even if the underlying encryption algorithm to be implemented is from the public domain or is not of U.S.-origin.

* * * * *

List of Items Controlled

Related Controls: See also 5E992. This entry does not control "technology" "required" for the "use" of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or "technology" related to equipment excluded from control under ECCN 5A002.

* * * * *

Items:

a. "Technology" according to the General Technology Note for the "development," "production" or "use" of equipment controlled by 5A002, 5A003, 5A004 or 5B002, or of "software" controlled by 5D002.a or 5D002.c.

* * * * *

■ 85. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5E992 is amended by removing and reserving Items paragraph a.

■ 86. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A001 is amended by:

■ a. Adding double quotes around the term "components" in the Heading, introductory text of Items paragraph a, a.1, a.1.d, a.2 and the Note to 6A001.a.2 in the List of Items Controlled section;

■ b. Revising Items paragraphs a.1.d.2 and a.1.e.2 in the List of Items Controlled section, as set forth below; and

■ c. Adding double quotes around the term "accuracy" in Items paragraphs a.2.d.1, b.1.b, and b.2 in the List of Items Controlled section.

The additions and revisions read as follows:

6A001 Acoustic systems, equipment and "components," as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.1. * * *

a.1.d. * * *

a.1.d.2. Determined position error of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: * * *

a.1.e. * * *

a.1.e.2. Determined position error of less than 15 m rms (root mean square) when measured at a range of 530 m; *and*

* * * * *

■ 87. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A002 is amended by adding paragraph d. to Note 2 to 6A002.a.3 in the Items paragraph of the List of Items Controlled section, to read as follows:

6A002 Optical sensors and equipment, and "components" therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.3. * * *

* * * * *

Note 2: * * *

d. Thermopile arrays having less than 5,130 elements;

* * * * *

■ 88. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A003 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

6A003 Cameras, systems or equipment, and "components" therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) See ECCNs 6E001 ("development"), 6E002 ("production"), and 6E201 ("use") for technology for items controlled under this entry. (2) Also see ECCN 6A203. (3) See ECCN 0A919 for foreign-made military commodities that incorporate cameras described in 6A003.b.3, 6A003.b.4.b, or 6A003.b.4.c. (4) Section 744.9 imposes license requirements on cameras described in 6A003.b.3, 6A003.b.4.b, or 6A003.b.4.c if being exported for incorporation into an item controlled by ECCN 0A919 or for a military end user.

* * * * *

■ 89. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A004 is amended by:

■ a. Adding a Note to Items paragraph a.3 in the List of Items Controlled section; and

■ b. Revising Items paragraphs d.2.a.3 and d.2.b, to read as follows:

The addition and revisions read as follows:

6A004 Optical equipment and "components," as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

a.3. * * *

Note: 6A004.a.2 and 6A004.a.3 do not apply to mirrors "specially designed" to direct solar radiation for terrestrial heliostat installations.

* * * * *

d. * * *

d.2. * * *

d.2.a. * * *

d.2.a.3. An angular "accuracy" of 10 μrad (microradians) or less (better);

d.2.b. Resonator alignment equipment having bandwidths equal to or more than 100 Hz and an "accuracy" of 10 μrad or less (better);

* * * * *

■ 90. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A005 is amended by:

■ a. Revising the introductory text to Note 2 located after Items paragraph a.6.b.2 and the Technical Note located after Note 2 in the List of Items Controlled section;

■ b. Revising Items paragraphs b.6.a.2 and b.6.b.2 in the List of Items Controlled section;

■ c. Removing the Note to 6A005.c.1 in the Items paragraph of the List of Items Controlled section;

■ d. Adding a Note to 6A005.c.1 after Items paragraph c.1.b in the List of Items Controlled section;

■ e. Adding a Note to 6A005.d.1.d.1.d in the Items paragraph d.1.d.1.d of the List of Items Controlled section;

■ f. Adding a Note to 6A005.d.1.d.2.d after the Items paragraph d.1.d.2.d of the List of Items Controlled section;

■ g. Revising Items paragraph e.3 introductory text, e.3.c.1, e.3.c.2, f.3, and g.1 through g.3 of the List of Items Controlled section;

■ h. Revising the Technical Note at the end of the Items paragraph in the List of Items Controlled section.

The revisions and additions read as follows:

6A005 "Lasers," "components" and optical equipment, as follows (see List of Items Controlled), excluding items that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. * * *

a.6. * * *

a.6.b. * * *

a.6.b.2. * * *

Note 2: 6A005.a.6.b does not apply to multiple transverse mode, industrial "lasers" having any of the following:

* * * * *

Technical Note: For the purpose of 6A005.a.6.b, Note 2 (a)(2), 'brightness' is defined as the output power of the "laser" divided by the squared Beam Parameter Product (BPP), *i.e.,* (output power)/BPP^2.

* * * * *

b. * * *

b.6. * * *

b.6.a. * * *

b.6.a.2. "Average output power" exceeding 30 W; *or*

* * * * *

b.6.b. * * *

b.6.b.2. "Average output power" exceeding 50 W; *or*

* * * * *

c. * * *

c.1. * * *

c.1.b. * * *

Note: 6A005.c.1 does not apply to dye "lasers" or other liquid "lasers," having a multimode output and a wavelength of 150 nm or more but not exceeding 600 nm and all of the following:

1. Output energy less than 1.5 J per pulse or a "peak power" less than 20 W; *and*

2. Average or CW output power less than 20 W.

* * * * *

d. * * *

d.1. * * *

d.1.d. * * *

d.1.d.1. * * *

d.1.d.1.d. * * *

Note: 6A005.d.1.d.1.d does not apply to epitaxially-fabricated monolithic devices.

* * * * *

d.1.d.2.d. * * *

Note: 6A005.d.1.d.2.d does not apply to epitaxially-fabricated monolithic devices.

* * * * *

e. * * *

e.3. Fiber "laser" "components" as follows:

* * * * *

e.3.c. * * *

e.3.c.1. Designed for spectral or coherent beam combination of 5 or more fiber "lasers;" *and*

e.3.c.2. CW "Laser" Induced Damage Threshold (LIDT) greater than or equal to 10 kW/cm^2;

f. * * *

f.3. Optical equipment and "components," "specially designed" for a phased-array "SHPL" system for coherent beam combination to an "accuracy" of λ/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

* * * * *

g. * * *

g.1. CW "laser" output power greater than or equal to 20 mW;

g.2. "Laser" frequency stability equal to or better (less) than 10 MHz;

g.3. "Laser" wavelengths equal to or exceeding 1,000 nm but not exceeding 2,000 nm;

* * * * *

Technical Note: 'Laser acoustic detection equipment' is sometimes referred to as a "Laser" Microphone or Particle Flow Detection Microphone.

■ 91. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A007 is amended by adding double quotes around the term "accuracy" in Items paragraphs .a, b.1 and b.2 in the List of Items Controlled section.

■ 92. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A008 is amended by:

■ a. Adding double quotes around the term "accuracy" in Items paragraph a.2 in the List of Items Controlled section;

■ b. Adding double quotes around the term "lasers" in Items paragraph j.3 in the List of Items Controlled section;

■ c. Adding double quotes around the term "aircraft" in Note 2 of the Technical Notes at the end of the Items paragraph in the List of Items Controlled section.

■ 93. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6B004 is amended by revising Items paragraph a in the List of Items Controlled section to read as follows:

6B004 Optical equipment as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Equipment for measuring absolute reflectance to an "accuracy" of equal to or better than 0.1% of the reflectance value;

* * * * *

■ 94. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6B007 is amended by adding double quotes around the term "accuracy" in the Heading.

■ 95. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6C005 is amended by adding double quotes around the term "laser" in Items paragraphs b.1 and b.2 in the List of Items Controlled section.

■ 96. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6E003 is amended by revising the Items paragraph in the List of Items Controlled section to read as follows:

6E003 Other "technology" as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

ACOUSTICS

a. [Reserved]

OPTICAL SENSORS

b. [Reserved]

CAMERAS

c. [Reserved]

OPTICS

d. "Technology" as follows:

d.1. Optical surface coating and treatment "technology," "required" to achieve an 'optical thickness' uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};

N.B.: See also 2E003.f.

Technical Note: 'Optical thickness' is the mathematical product of the index of refraction and the physical thickness of the coating.

d.2. Optical fabrication "technology" using single point diamond turning techniques to produce surface finish "accuracies" of better than 10 nm rms on non-planar surfaces exceeding 0.5 m2;

LASERS

e. "Technology" "required" for the "development," "production" or "use" of "specially designed" diagnostic instruments or targets in test facilities for "SHPL" testing or testing or evaluation of materials irradiated by "SHPL" beams;

MAGNETIC AND ELECTRIC FIELD SENSORS

f. [Reserved]

GRAVIMETERS

g. [Reserved]

RADAR

h. [Reserved]

■ 97. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7A003 is amended by:

■ a. Revising the Technical Note at the beginning of the Items paragraph of the List of Items Controlled section;

■ b. Adding double quotes around the term "accuracies" in the introductory paragraph in the Items paragraph .a, and the term "accuracy" in the Items paragraphs b, c.1, and c.2 in the List of Items Controlled section;

■ c. Removing single quotes and adding double quotes around the term "Circular Error Probable" in the Items paragraph a.1 in the List of Items Controlled section; and

■ d. Removing single quotes and adding double quotes around the term "CEP" in Items paragraphs a.1, a.2, a.3, and .b in the List of Items Controlled section.

The revision reads as follows:

7A003 'Inertial measurement equipment or systems', having any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

Technical note:

'Positional aiding references' independently provide position, and include:

a. Global Navigation Satellite Systems (GNSS);

b. "Data-Based Referenced Navigation" ("DBRN").

* * * * *

■ 98. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7A004 is amended by adding double quotes around the term "accuracy" in the Items paragraph a in the List of Items Controlled section.

■ 99. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7A008 is amended by adding double quotes around the term "accuracy" in the Heading.

■ 100. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7B001 is amended by adding double quotes around the term "aircraft" in paragraph (1) of the Related Definitions paragraph in the List of Items Controlled section.

■ 101. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7B002 is amended by adding double quotes around the term "accuracies" in Items paragraphs .a and .b of the List of Items Controlled section.

■ 102. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7E004 is amended by:

■ a. Adding double quotes around the term "accuracy" in Items paragraph a.7 of the List of Items Controlled section;

■ b. Adding double quotes around the term "aircraft" in the Items paragraphs b.1, b.7.b.4, b.8.a and b.8.b of the List of Items Controlled section; and

■ c. Removing the word "directional" and adding in its place "direction" in the Items paragraph c.2 of the List of Items Controlled section.

■ 103. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8, ECCN 8A001 is amended by:

■ a. Revising the Related Controls paragraph in the List of Items Controlled section, as set forth below;

■ b. Adding double quotes around the term "accuracies" in Items paragraph e.2 of the List of Items Controlled section.

The revision reads as follows:

8A001 Submersible vehicles and surface vessels, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: For the control status of equipment for submersible vehicles, see: Category 6 for sensors; Categories 7 and 8 for navigation equipment; Category 8A for underwater equipment.

* * * * *

■ 104. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8, ECCN 8A002 is amended by:

■ a. Revising the GBS and CIV paragraphs in the List Based License Exception section;

■ b. Revising Items paragraph d of the List of Items Controlled section;

■ c. Removing and reserving Items paragraph e in the List of Items

Controlled section. The revisions read as follows:

8A002 Marine systems, equipment, "parts" and "components," as follows (see List of Items Controlled).

* * * * *

List Based License Exceptions (see Part 740 for a description of all license exceptions)

* * * * *

GBS: Yes for manipulators for civil end uses (*e.g.*, underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement; and 8A002.r.

CIV: Yes for manipulators for civil end uses (*e.g.*, underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement; and 8A002.r.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. Underwater vision systems "specially designed" or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter and including range-gated illuminators or "laser" systems;

* * * * *

■ 105. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A001 is amended by:

■ a. Adding double quotes around the term "aircraft" in paragraph b. of Note 1 to Items 9A001.a in the List of Items Controlled section; and

■ b. Adding double quotes around the term "aircraft" in Items paragraph b introductory text in the List of Items Controlled section.

■ 106. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A004 is amended by removing the reference to "5A002.a.5, 5A002.a.9" and adding in its place "5A002.c, 5A002.e" in Items paragraph d in the List of Items Controlled section.

■ 107. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A012 is amended by removing the Note at the end of the Items paragraph in the List of Items Controlled section.

■ 108. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9B001 is amended by revising Items paragraph b in the List of Items Controlled section to read as follows:

9B001 Equipment, tooling or fixtures, "specially designed" for manufacturing gas turbine engine blades, vanes or "tip shrouds," as follows (See List of Items Controlled).

* * * * *

Items:

* * * * *

b. Casting tooling, manufactured from refractory metals or ceramics, as follows:

b.1. Cores;

b.2. Shells (moulds);

b.3. Combined core and shell (mould) units.

* * * * *

■ 109. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9E003 is amended by:

■ a. Adding double quotes around the term "aircraft" in two places in Related Controls paragraph (2) in the List of Items Controlled section;

■ b. Adding double quotes around the term "aircraft" in the Note to 9E003.h in the List of Items Controlled section;

■ c. Adding double quotes around the term "aircraft" in Items paragraph j and the Nota Bene that follows in the List of Items Controlled section.

Supplement No. 2 to Part 774 [Amended]

■ 110. Supplement No. 2 to part 774 "General Technology And Software Notes" is amended by adding paragraph 3 to read as follows:

Supplement No. 2 To Part 774—General Technology and Software Notes

* * * * *

3. *General "Information Security" Note.* "Information security" items or functions should be considered against the provisions in Category 5–Part 2, even if they are components, "software" or functions of other items.

* * * * *

■ 111. Supplement No. 6 to part 774 "Sensitive List" is amended by revising paragraphs (2)(i) "2D001," (2)(ii) "2E001," (2)(iii) "2E002," (4)(ii) "4D001," (4)(iii) "4E001," to read as follows:

Supplement No. 6 to Part 774—Sensitive List

* * * * *

(2) Category 2

(i) 2D001—"Software," other than that controlled by 2D002, specially designed for the "development" or "production" of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having two or more axes which can be coordinated simultaneously for "contouring control" having any of the following:

(1) "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*

(2) "Unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control" having any of the following:

(a) "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*

(b) "Unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a "unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis; or

(3) A "unidirectional positioning repeatability" for jig boring machines equal to or less (better) than 1.1 μm along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) "Numerically controlled" or manual machine tools controlled under 2B003.

(ii) 2E001—"Technology" according to the General Technology Note for the "development" of "software" specified by 2D001 described in this Supplement or for the "development" of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having two or more axes which can be coordinated simultaneously for "contouring control" having any of the following:

(1) "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*

(2) "Unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control" having any of the following:

(a) "Unidirectional positioning repeatability" equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*

(b) "Unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a "unidirectional positioning repeatability" equal to or less (better) than 1.1 μm along one or more linear axis; or

(3) A "unidirectional positioning repeatability" for jig boring machines equal to or less (better) than 1.1 μm along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) "Numerically controlled" or manual machine tools controlled under 2B003.

(iii) 2E002—"Technology" according to the General Technology Note for the "production" of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having two or more axes which can be coordinated simultaneously for "contouring control" having any of the following:

(1) "Unidirectional positioning repeatability" equal to or less (better) than 0.9 µm along one or more linear axis with a travel length less than 1.0 m; *or*

(2) "Unidirectional positioning repeatability" equal to or less (better) than 1.1 µm along one or more linear axis with a travel length equal to or greater than 1.0 m;

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control" having any of the following:

(a) "Unidirectional positioning repeatability" equal to or less (better) than 0.9 µm along one or more linear axis with a travel length less than 1.0 m; *or*

(b) "Unidirectional positioning repeatability" equal to or less (better) than 1.1 µm along one or more linear axis with a travel length equal to or greater than 1.0 m;

(2) Specified by 2B001.b.2.a, 2B001.b.2.b or 2B001.b.2.c and having a "unidirectional positioning repeatability" equal to or less (better) than 1.1 µm along one or more linear axis; or

(3) A "unidirectional positioning repeatability" for jig boring machines equal to or less (better) than 1.1 µm along one or more linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) "Numerically controlled" or manual machine tools controlled under 2B003.

* * * * *

(4) Category 4

* * * * *

(ii) 4D001—"Software" "specially designed" for the "development" or "production" of equipment controlled under ECCN 4A001.a.2 or for the "development" or "production" of "digital computers" having an 'Adjusted Peak Performance' ('APP') exceeding 12.5 Weighted TeraFLOPS (WT).

(iii) 4E001—"Technology" according to the General Technology Note for the "development" or "production" of any of the following equipment or "software": equipment controlled under ECCN 4A001.a.2, "digital computers" having an 'Adjusted Peak Performance' ('APP') exceeding 12.5 Weighted TeraFLOPS (WT), or "software" controlled under the specific provisions of 4D001 described in this Supplement.

* * * * *

Dated: September 1, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–21544 Filed 9–19–16; 8:45 am]

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Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 744
Revisions to the Entity List; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[160609506–6506–01]

RIN 0694–AH00

Revisions to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by revising the license requirement to apply to all items subject to the EAR for twelve Chinese entities on the Entity List. These revisions are made in order to address national security concerns resulting from the removal of certain subparagraphs of Export Control Classification Numbers (ECCNs) 5A992, 5D992 and 5E992 that occurs in the 2015 Wassenaar Implementation rule, which is also published elsewhere in this issue of the **Federal Register**. This rule also brings the general Entity List license requirements, policies and procedures under a single section of the EAR to assist the public to better locate and comply with these regulations.

DATES: This rule is effective September 20, 2016.

FOR FURTHER INFORMATION CONTACT: For questions relating to the Entity List, please contact the Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.* All other questions may be directed to Sharron Cook, Office of Exporter Services, Regulatory Policy Division: (202) 482–2440, Email: *sharron.cook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The "license requirement" for each listed entity or person is identified in the License Requirement column on the Entity List. The impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List or to the extent specified within the entries on the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. Generally, the ERC makes all decisions to modify an entry by unanimous vote. The modifications in this Entity List rule are being made pursuant to the unanimous clearance of this rule by the Departments of Commerce, State, Defense and Energy.

Revisions to the Entity List

To maintain the level of national security warranted for certain encryption items, this rule revises the license requirements for twelve entities. The removal of ECCNs 5A992.a and .b, 5D992.a and .b and 5E992.a from the Commerce Control List (CCL) implemented in a separate rule entitled "Wassenaar Arrangement 2015 Plenary Agreements Implementation, Removal of Foreign National Review Requirements, and Information Security Updates," also published in today's **Federal Register**, designates these encryption items as EAR99. To prevent these EAR99 encryption items from being exported, reexported or transferred to certain prohibited end users without a license, this rule revises the license requirements of twelve Chinese entities on the Entity List to "all items subject to the EAR." Currently, the license requirements for each of the twelve entities exclude EAR99 items. With the publication of this rule, EAR99 items will be included in the scope of the license requirements for these entities. This rule revises the license requirements for the following twelve entities in China: 33 Institute, 35 Institute, 54th Research Institute of China, Baotou Guanghua Chemical Industrial Corporation, Beijing Aerospace Automatic Control Institute (BICD), Beijing Institute of Structure and Environmental Engineering (BISE), China Aerodynamics Research and Development Center (CARDC), Northwestern Polytechnical University, Shanghai Academy of Spaceflight Technology (SAST), Shanghai Institute of Space Power Sources, Southwest Research Institute of Electronics Technology, and Xi'an Research Institute of Navigation Technology.

Consolidation of Entity List Regulatory Provisions

This rule also reorganizes the information found in part 744 of the EAR in order to facilitate finding the regulations pertaining to the Entity List. The intent is to consolidate and not change any of existing requirements, procedures or policies. Specifically, this rule removes paragraph (c) from § 744.1 and moves it to § 744.16, in which Entity List license requirements, policies and procedures may now be found. While Section 1 of most parts of the EAR is used to explain what is included in the part, prior to this rule, § 744.1 included general license requirements for the Entity List. While other sections in part 744 pertain to the criteria used to add specific entities on the Entity List, § 744.16 will now be dedicated to general license requirements, license policies, license exception eligibility and other policies for the Entity List.

Saving Clause

Shipments of items removed from eligibility for a License Exception or export, reexport or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport or transfer (in-country), on September 20, 2016, pursuant to actual orders for export, reexport or transfer (in-country) to a foreign destination, may proceed to that destination under the previous eligibility for a license exception or export, reexport or transfer (in-country) without a license (NLR).

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to not be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by rationalizing and harmonizing controls for better compliance, administration, and enforcement of items being exported, reexported, or transferred (in-country) to the persons on the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, EAR99 items would continue to be exported, reexported and transferred (in-country) without a license to persons or entities on the Entity List, contrary to the national security or foreign policy interests of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

5. For the revisions to Section 744.16, the Department finds there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment to the provision of this rule, because the provisions have not been changed, but consolidated into one section so that these provisions may be more easily found in the EAR. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 744.1 is amended by revising the twelfth sentence in paragraph (a)(1) and by removing paragraph (c).

The revision reads as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.16 sets forth the license requirements, policies and procedures for the Entity List. * * *

* * * * *

■ 3. Section 744.16 is revised to read as follows:

§ 744.16 Entity List.

The Entity List (Supplement No. 4 to part 744) identifies persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The entities are added to the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

(a) *License requirements.* The public is hereby informed that in addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) items specified on the Entity List to listed entities without a license from BIS. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in Supplement No. 4 to this part.

(b) *License exceptions.* No license exceptions are available for exports, reexports or transfers (in-country) to listed entities of specified items, except license exceptions for items listed in § 740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, and in the case of entities added to the Entity List pursuant to § 744.20, to the extent specified on the Entity List.

(c) *License review policy*—(1) *General review policy.* The license review policy for each listed entity is identified in the License Review Policy column on the Entity List.

(d) *The End-User Review Committee (ERC).* The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, generally makes decisions regarding additions to, removals from, or other modifications to the Entity List.

(e) *Removal or modification requests.* Any entity listed on the Entity List may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Room 3886, Washington, DC 20230.

(1) *Review.* The ERC will review such requests in accordance with the procedures set forth in Supplement No. 5 to this part.

(2) *BIS action.* The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

■ 4. In Supplement No. 4 to part 744, under "China, People's Republic of," revise the entries for the following entities:

■ a. 33 Institute;
■ b. 35 Institute;
■ c. 54th Research Institute of China;
■ d. Baotou Guanghua Chemical Industrial Corporation;
■ e. Beijing Aerospace Automatic Control Institute (BICD);
■ f. Beijing Institute of Structure and Environmental Engineering (BISE);
■ g. China Aerodynamics Research and Development Center (CARDC);
■ h. Northwestern Polytechnical University;
■ i. Shanghai Academy of Spaceflight Technology (SAST);
■ j. Shanghai Institute of Space Power Sources;
■ k. Southwest Research Institute of Electronics Technology; and
■ l. Xi'an Research Institute of Navigation Technology.

The revisions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
* * * * * * *				
CHINA, PEOPLE'S REPUBLIC OF	* * * * * *			
	33 Institute, a.k.a., the following three aliases: —Beijing Automation Control Equipment Institute (BACEI); —Beijing Institute of Automatic Control Equipment, China Haiying Electromechanical Technology Academy; *and* —No. 33 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC): Yungang, Fengtai District, Beijing	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	35 Institute, a.k.a., the following four aliases: —Beijing Hangxing Machine Building Corporation; —Beijing Huahang Radio Measurements Research Institute, China Haiying Electronic Mechanical Technical Research Academy; —Huahang Institute of Radio Measurement; *and* —No. 35 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC):	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
	54th Research Institute of China, a.k.a., the following three aliases: —China Electronics Technology Group Corp. (CETC) 54th Research Institute; —Communication, Telemetry and Telecontrol Research Institute (CTI); *and* —Shijiazhuang Communication Observation and Control Technology Institute.	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
* * * * * * *				
	Baotou Guanghua Chemical Industrial Corporation (Parent Organization: China National Nuclear Group Corporation (CNNC)), a.k.a., the following five aliases: —202 Plant, Baotou Nuclear Energy Facility; —Baotou Guanghua Chemical Industrial Corporation;	For all items subject to the EAR.	See § 744.2(d) of this part	66 FR 24266, 5/14/01 75 FR 78883, 12/17/10. 81 FR [INSERT FR PAGE NUMBER 9/20/16.

Country	Entity	License requirement	License review policy	Federal Register citation
	—Baotou Guanghua Chemical Industry Company; —Baotou Nuclear Fuel Element Plant; *and* —China Nuclear Baotou Guanghua Chemical Industry Company. 202 Factory Baotou, Inner Mongolia.			
	* *	* *	*	* *
	Beijing Aerospace Automatic Control Institute (BICD), a.k.a., the following four aliases: —12th Research Institute China Academy of Launch Vehicle Technology (CALT); —Beijing Institute of Space Automatic Control; —Beijing Spaceflight Autocontrol Research Institute; *and* —China Aerospace Science and Technology Corp First Academy 12th Research Institute. 51 Yong Ding Road, Beijing; *and* No. 50 Yongding Road, Haidian District, Beijing, China, 100854.	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
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	Beijing Institute of Structure and Environmental Engineering (BISE), a.k.a., the following two aliases: —702nd Research Institute, China Academy of Launch Vehicle Technology (CALT); *and* —Beijing Institute of Strength and Environmental Engineering No. 30 Wanyuan Road, Beijing.	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99 75 FR 78877, 12/17/10. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
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	China Aerodynamics Research and Development Center (CARDC). Sichuan Province.	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28910, 5/28/99. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
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	Northwestern Polytechnical University, a.k.a., the following three aliases: —Northwestern Polytechnic University; —Northwest Polytechnic University; *and* —Northwest Polytechnical University. 127 Yonyi Xilu, Xi'an 71002 Shaanxi, China; *and* Youyi Xi Lu, Xi'an, Shaanxi, China; *and* No. 1 Bianjia Cun, Xi'an; *and* West Friendship Rd. 59, Xi'an; *and* 3 10 W Apt 3, Xi'an.	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 881 FR [INSERT FR PAGE NUMBER 9/20/16.
	* *	* *	*	* *
	Shanghai Academy of Spaceflight Technology (SAST), a.k.a., the following four aliases: —8th Research Academy of China Aerospace; —Shanghai Astronautics Industry Bureau;	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78877, 12/17/10. 81 FR [INSERT FR PAGE NUMBER 9/20/16.

Country	Entity	License requirement	License review policy	Federal Register citation
	—Shanghai Bureau of Astronautics (SHBOA); *and* —Shanghai Bureau of Space. Shanghai, Spaceflight Tower, 222 Cao Xi Road, Shanghai, 200233:			
	Shanghai Institute of Space Power Sources, a.k.a., the following three aliases: —811th Research Institute, 8th Academy, China Aerospace Science and Technology Corp. (CASC); —Shanghai Space Energy Research Institute; *and* —Shanghai Space Power Supply Research Institute. 388 Cang Wu Road, Shanghai; *and* Dongchuan Rd., 2965 Shanghai.	For all items subject to the EAR.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
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	Southwest Research Institute of Electronics Technology, a.k.a., the following three aliases: —10th Research Institute of China Electronic Technology Group Corp (CETC); —CETC 10th Research Institute; *and* —Southwest Institute of Electronic Technology (SWIET); No. 6 Yong Xin Street, Chengdu; *and* No. 90 Babao Street, Chengdu; *and* 48 Chadianzi Street East, Jinniu District, Chengdu, 610036.	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
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	Xi'an Research Institute of Navigation Technology, a.k.a., the following two aliases: —20th Research Institute of China Electronic Technology Group Corp (CETC); *and* —CETC 20th Research Institute 1 Baisha Rd., Xi'an, Shaanxi.	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12. 81 FR [INSERT FR PAGE NUMBER 9/20/16.
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Dated: September 1, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–21543 Filed 9–19–16; 8:45 am]

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Part V

Pension Benefit Guaranty Corporation

29 CFR Parts 4000, 4001, 4003, et al.
Missing Participants; Proposed Rules

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4001, 4003, 4041, 4041A, and 4050

RIN 1212–AB13

Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) administers a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help those participants and beneficiaries find and receive the benefits being held for them. The program is currently limited to single-employer defined benefit pension plans covered by the pension insurance system under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC proposes to make changes to its existing program and, as authorized by the Pension Protection Act of 2006, to establish similar programs for multiemployer plans covered by title IV, certain defined benefit plans that are not covered by title IV, and most defined contribution plans. PBGC seeks public comment on its proposal.

DATES: Comments must be submitted on or before November 21, 2016.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB13, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4112.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB13). Comments received, including personal information provided, will be posted to *www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*murphy.deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026; 202–326–4400 extension 3451; or Stephanie Cibinic (*cibinic.stephanie@pbgc.gov*), Deputy Assistant General Counsel for Regulatory Affairs, 202–326–4400 extension 6352. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400 extension 3451 or 202–326–4400 extension 6352.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This proposed rule is needed to implement amendments to section 4050 of ERISA. Those amendments require PBGC to establish rules to handle the benefits of missing participants and beneficiaries under terminated multiemployer plans covered by title IV of ERISA similar to the rules for covered single-employer plans. They also provide for a similar voluntary program for terminated non-covered plans and authorize PBGC to prescribe related reporting requirements.

PBGC's legal authority for this action comes from section 4002(b)(3) of ERISA, which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4050 of ERISA, which gives PBGC authority to prescribe regulations regarding missing persons owed benefits under terminated retirement plans, including rules on the amounts to be paid to and from the program and how to search for missing participants and beneficiaries.

Major Provisions of the Regulatory Action

The regulatory action would extend the missing participants program to terminated multiemployer plans covered by title IV and make it available to terminated professional service plans with 25 or fewer participants and to most terminated defined contribution plans.

Under the regulatory action, PBGC anticipates charging fees for plans to participate in the missing participants program; the fees would not exceed PBGC's costs.

The regulatory action would also modify the criteria for being "missing" and provide more specificity in the diligent search rules for defined benefit plans. It would modify the procedures for determining the appropriate sum to send to PBGC for the benefits of a missing participant or beneficiary. It proposes to follow key plan provisions about the benefits to pay to those who are found. Finally, it would eliminate some unnecessary rules.

Background

In General

PBGC administers the pension plan termination insurance program under title IV of ERISA, which applies to most defined benefit (DB) plans. In general terms, a DB plan is a retirement plan that provides specified benefits and is subject to certain funding requirements. Within statutory limits, PBGC guarantees benefits of participants and their beneficiaries upon the underfunded termination of a plan covered by title IV. PBGC also monitors the termination of covered plans that are fully funded for guaranteed benefits, which must follow procedures provided under title IV.

The process of closing out a terminated retirement plan involves the disposition of plan assets to satisfy the benefits of plan participants and beneficiaries. One difficulty faced by a plan administrator in closing out a terminated plan is how to provide for the benefits of missing persons. This problem was addressed for single-employer plans subject to the title IV insurance program by the creation, under the Retirement Protection Act of 1994 (RPA '94), of a program administered by PBGC to deal with the benefits of missing participants and beneficiaries in terminated plans.[1] Section 4050 of ERISA, as added by RPA '94, requires a plan administrator to undertake a diligent search (subject to definition in PBGC regulations) for each missing participant or beneficiary. It further describes procedures for a plan to follow in calculating the amount to be transferred to PBGC for a person who cannot be found, and for PBGC to follow in providing benefits to the person when the person ultimately appears—also subject to PBGC regulations. PBGC implemented the program in part 4050 of its regulations in 1995.

Authorization of New Programs

The Pension Protection Act of 2006 amended section 4050 of ERISA to expand its scope dramatically—offering the prospect of participation in missing participants programs to terminated multiemployer plans covered by title IV and several categories of terminated non-covered plans, including most defined contribution (DC) plans. In general terms, a DC plan is a retirement plan that provides for a participant to receive whatever is in the vested portion of the participant's retirement account. Program participation for title IV multiemployer plans is to be similar to that for title IV single-employer plans now in the program (although close-out of a multiemployer plan may not follow immediately upon plan termination). Non-title IV plans would be eligible (but not required) to turn benefits of missing participants and beneficiaries over to PBGC, and PBGC is further authorized to provide for such plans to report how they dealt with missing persons' benefits not placed either with PBGC or another retirement plan.

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[1] Not all terminated plans are included. ERISA section 4050(a)(1) refers to plans subject to ERISA section 4041(b)(3)(A). That includes plans in standard terminations (as stated in section 4041(b)(3)(A)) and plans in "sufficient distress terminations" (as provided for in section 4041(c)(3)(B)(i) and (ii)), but not plans trusteed by PBGC.

To develop a better understanding of the DC plan community's needs and desires for, and likely responses to, an expanded missing participants program, PBGC sought information about the number of missing participants in terminated plans, the size of their benefits, and how the benefits were handled. PBGC then published in the **Federal Register** (at 78 FR 37598, June 21, 2013) a request for information (RFI) about a variety of topics relevant to implementation of the expanded missing participants program.[2] PBGC received 22 responses from employer, plan, and participant representatives, pension service providers, and financial institutions.[3] Commenters embraced expansion of PBGC's missing participants program to accept accounts from terminated DC plans and to include those owed money in a searchable database of missing participants and beneficiaries. Opinions were split on whether submission of information about the handling of missing participant accounts not turned over to PBGC should be voluntary or mandatory. There was broad support for coordination among federal agencies on issues related to sponsor obligations. Commenters urged the need for both flexibility and safe harbors.

Coordination and Consultation

The Advisory Council on Employee Welfare and Pension Benefit Plans (ERISA Advisory Council) issued a 2013 report[4] on Locating Missing and Lost Participants based on hearings at which a PBGC staff member testified (among other things) about responses to PBGC's request for information. The Advisory Council report recommended development of effective methods for and guidance on searching for missing participants, including use of web search and commercial locator services. It also recommended that, if PBGC implemented a missing participants program for terminated DC plans, compliance with the PBGC program should be accorded safe harbor status under ERISA. And it urged cooperation among federal agencies, in particular to develop and implement PBGC's missing participants program.

On August 14, 2014, the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) issued Field Assistance Bulletin No. 2014–01 on Fiduciary Duties And Missing Participants In Terminated Defined Contribution Plans (the FAB).[5] The FAB provides guidance about required search steps and options for dealing with the benefits of missing participants in terminated DC plans.

As recommended by the ERISA Advisory Council, PBGC staff consulted with staff of EBSA and of the Solicitor of Labor's Plan Benefits Security Division and with staff of the Internal Revenue Service (IRS) and the Department of the Treasury. Those consultations were very helpful in developing this proposed rule. PBGC will continue to work closely with these agencies on this rulemaking and other matters affecting missing participants.

In those consultations, the IRS informed PBGC that it anticipates a DC plan would not fail to be qualified solely because it transfers appropriate amounts to PBGC in accordance with PBGC's missing participants program pursuant to section 4050(a)(2) of ERISA.

The Department of Labor has advised PBGC that it intends to review and possibly revise its regulations and guidance to coordinate with PBGC's development of a final rule on missing participants. For instance, the Department of Labor indicated its intent to review its fiduciary safe harbor regulation entitled "Safe Harbor for Distributions from Terminated Individual Account Plans," which provides for distributions to individual retirement plans in such circumstances as when the participant or beneficiary has been furnished a notice but fails to elect a form of distribution in a timely manner,[6] and thus would be considered missing under this proposed rule.[7] As part of its review, the Department of Labor said it specifically intends to consider transfers to PBGC in lieu of rollovers to individual retirement plans in these same circumstances. The Department of Labor also indicated its intent to review its "Abandoned Plan Regulations," which currently provide for distributions generally to individual retirement plans in circumstances identical to those set forth in the Safe Harbor for Distributions from Terminated Individual Account Plans.[8]

Overview

PBGC proposes to completely redesign its existing missing participants program for single-employer DB plans and to adopt three new missing participants programs. The three new programs would be for multiemployer DB plans covered by the title IV insurance program, for professional service employer DB plans not covered by title IV, and for most DC plans. All four programs would follow the same basic design.

Among the most prominent changes to the existing program would be:

- Provision for fees to be charged for plans to participate in the missing participants program.
- A requirement to treat as "missing" non-responsive distributees with *de minimis* benefits subject to mandatory cash-out under the plan's terms.
- More robust requirements for diligent searches, using sponsor and related plan records, free web-search methods, and (subject to waiver) commercial locator services (which would be clearly defined).
- Fewer benefit categories and fewer sets of actuarial assumptions for determining the amount to transfer to PBGC.
- Changes in the rules for paying benefits to missing participants and their beneficiaries.

In addition, the missing participants forms and instructions would require the reporting of the monthly amount of each missing participant's accrued benefit in straight-life form assuming commencement at each exact age going forward from the later of the benefit transfer date or age 55 to the required beginning date under Code section 401(a)(9)(C).[9]

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[2] See *http://www.pbgc.gov/documents/2013-14834.pdf.*

[3] See *http://www.pbgc.gov/documents/Missing-Participants-in-Individual-Account-Plans-Comments.pdf.*

[4] See *http://www.dol.gov/ebsa/publications/2013ACreport3.html.*

[5] See *http://www.dol.gov/ebsa/regs/fab2014-1.html.*

[6] See 29 CFR 2550.404a–3. In certain limited circumstances, the Department of Labor's safe harbor permits a fiduciary to distribute a missing participant's account balance to a federally insured savings account in the missing participant's name or a State unclaimed property fund in lieu of a rollover to an individual retirement plan.

[7] See the discussion of "missing" under Terminology below.

[8] See 29 CFR 2578.1.

The program for terminated DC plans would be simpler than the programs for terminated DB plans in recognition of their different structure and regulatory framework. There would be no need for benefit valuation rules to determine the amount for a plan to transfer to PBGC; plans would simply transfer account balances. The definition of "missing" and the diligent search requirements would reflect guidance already established by EBSA and followed by terminated DC plans. Abandoned plans and qualified termination administrators winding up such plans, as defined under Department of Labor regulations,[10] would be able to participate in the missing participants program if they met the same requirements applicable to other DC plans.[11]

The proposed rule is intended to give DC plans, multiemployer plans, and small professional service plans a new option for dealing with missing participants and beneficiaries when closing out the plan and to make it more likely that missing persons will receive their benefits.

An important part of all of the missing participants programs would be a new unified pension search database. This database would be designed and operated for PBGC according to best practices by a private-sector entity with expertise in such enterprises and will be implemented in a way that protects individuals' privacy. It would include information about missing participants and their benefits and a directory through which members of the public could easily query the database (using a choice of fields) to determine whether it contained information about benefits being held for them. PBGC anticipates that its new pension search database would provide a comprehensive, nationwide, authoritative, reliable, easy-to-use source of information about missing participants and the benefits being held for them.

Terminology

The proposed rule would introduce some changes from the terminology used in the statute and the current regulation.

The existing regulation, following the statute, uses the phrase "missing participant" to refer to either a beneficiary or a participant. To reduce possible confusion from using the word "participant" in a phrase that may refer to a beneficiary, the proposed regulation would use the term "missing distributee" to refer to a missing participant or missing beneficiary.[12] However, some headings in the regulation and some discussion in this preamble refer to missing participants, the more familiar phrase.

"Missing" would be defined more specifically than in the current regulation. As explained below, a distributee would be missing if—

(1) For a DB plan, the plan did not know where the distributee was (*e.g.*, a notice from the plan was returned as undeliverable), unless the distributee's benefit was subject to mandatory "cash-out" under the terms of the plan,[13] or

(2) For a DC plan, or a distributee whose benefit was subject to a mandatory cash-out under the terms of a DB plan, the distributee failed to elect a form or manner of distribution.

In most cases,[14] a distributee who did not make an effective election of a form of distribution would be "missing." Department of Labor regulations[15] treat DC plan distributees who cannot be found following a diligent search similar to distributees whose whereabouts are known but who do not elect a form of distribution.[16] PBGC has observed that some terminating DB plans treat distributees with benefits subject to a mandatory "cash-out," but who do not return election forms, as not missing and their benefits, therefore, as ineligible for transfer to PBGC under its missing participants program. The benefits of these non-responsive distributees instead are placed in IRAs that may be difficult to find years later. Such distributees appear to be just the sort that the missing participants program was meant to serve. The new definition of "missing" will allow DB plans to deliver such non-responsive distributees into PBGC's fold, featuring a centralized governmental repository and pension search capability.

However, distributees with benefits that are not subject to a mandatory cash-out provision under DB plans generally enjoy plan rights and features not available to those whose benefits may be cashed-out. Unless a distributee chooses to start receiving payment immediately, no benefit election is generally expected of the distributee. Absent an election, the distributee's benefit would be annuitized, preserving the distributee's rights and options under the plan. And for title IV plans the identity of the insurer that issued the annuity would have to be provided to PBGC if the distributee were missing. Accordingly, distributees whose benefits are not subject to a mandatory cash-out provision under DB plans would be missing only if the plan did not know where they were.

Regardless of the size of a missing distributee's benefit, a diligent search would be required. The kind of diligent search required would be more specifically prescribed for DB plans than DC plans, and no diligent search would be required if the plan knew where the distributee was located. See Diligent search, below.

The term "designated benefit," which is also used in the statute and the existing regulation, does not refer to a benefit but to an amount transferred to PBGC by a plan. Under the regulation, the designated benefit includes missed payments of pay-status benefits, but currently it is not clear how plans are to value missed payments or how PBGC is to identify which portion of a designated benefit represents missed payments. PBGC is proposing new terminology to clarify these matters. The present value of future payments of an annuity would be called the "benefit transfer amount." Missed payments would be valued by accumulating interest at a specified rate and would be separately identified when submitted to PBGC; the amount so submitted would be called the "plan make-up amount." (PBGC also plans to charge fees for participation in the missing participants programs. Thus, the amount that a plan would be required to remit to PBGC with respect to a missing distributee could comprise three amounts: the benefit transfer amount, the plan make-up amount, and the fee.)

The "deemed distribution date" for a plan (a defined term in the current regulation) depends on an election of the plan administrator based on the timeline for standard termination of a single-employer plan covered by title IV. In the interests of simplicity and uniformity for all plan types, the deemed distribution date would be replaced by other concepts, notably the "benefit transfer date," which would be the date as of which amounts to be transferred from a plan to PBGC would be determined and on which they would be paid.

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[9] PBGC would interpolate where necessary to obtain figures for fractional ages.

[10] *See* 29 CFR 2578.1.

[11] PBGC anticipates providing flexibility in filing requirements to enable participation in the missing participants program by abandoned plans and other plans that might not have full sets of records.

[12] Where a plan knows a participant is deceased and has no known beneficiary, the unknown beneficiary is a distributee.

[13] A qualified plan is permitted to require a mandatory cash-out of a participant's benefit pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code.

[14] PBGC expects that most plans using the missing participants program will be terminated DC plans and that most benefits under terminated DB plans using the program will have been mandatory cash-outs pursuant to plan provisions.

[15] *See* 29 CFR 2550.404a–3 and 2578.1.

[16] Under the proposal, a missing distributee in a terminated DC plan would include a distributee who fails to elect a form of distribution in response to a notice meeting the requirements of 29 CFR 2550.404a–3. If the notice is returned as undeliverable, the DC plan administrator must conduct a diligent search that meets the requirements of section 404 of ERISA.

The "designated benefit interest rate," used by PBGC for crediting interest under the current regulation, would be renamed the "missing participants interest rate," and would be used by plans as well as by PBGC.

The current regulation's "missing participant lump sum assumptions" would be eliminated, and the "missing participant annuity assumptions" would be modified and renamed "PBGC missing participant assumptions." These changes are discussed below under Amounts to be transferred.

Organization

The new missing participants regulation would describe four programs, each of which would be set forth in a separate subpart of the regulation:

- A revised version of the existing program for single-employer plans covered by title IV of ERISA (subpart A),
- A new program for DC plans (subpart B),[17]
- A new program for small professional service DB plans (subpart C),[18] and
- A new program for multiemployer plans covered by the title IV insurance program (subpart D).

Each subpart would contain seven sections, dealing with:

- Purpose and scope (section number ending in 1),
- Definitions (section number ending in 2),
- Options and Duties (section number ending in 3),
- Diligent search (section number ending in 4),
- Filing with PBGC (including fees) (section number ending in 5),
- Missing participant benefits from PBGC (section number ending in 6), and
- PBGC discretion (section number ending in 7).

Options and Duties

In each subpart, the options and duties (or just duties) section under the missing participants program serves as a "road map" to the more specific provisions that plans would need to know about. In many ways, each subpart's section would be similar to the others, but there would be differences reflecting the differences in the various missing participants programs.

Mandatory vs. Voluntary Functions

The most prominent difference would lie in the mandatory or voluntary nature of the programs. Section 4050(a)(1) requires title IV plans to use the missing participants program, but by statute they have the choice—for each missing participant—of transferring the benefit to PBGC or purchasing an annuity contract and giving PBGC the information that the missing participant would need to get access to the benefit. For title IV plans, therefore, participation in the missing participants program is mandatory, but a plan may choose the missing participants for which it will transfer benefits and those for which it will report annuitization details.

New section 4050(d)(1) of ERISA permits but does not require non-title IV plans to turn missing participants' benefits over to PBGC. New section 4050(d)(2) of ERISA, on the other hand, says that (to the extent provided in PBGC regulations) non-title IV plans *must* upon plan termination provide information about the disposition of missing participants' benefits that are not transferred to another pension plan. PBGC's 2013 request for information flagged this reporting provision for public comment, and as noted above (in Background), there were some differences of opinion on this point. In general, employer advocates considered mandatory reporting unnecessarily burdensome, while participant advocates considered it an essential part of an effective pension search program.

PBGC has decided not to impose a mandatory reporting requirement for non-title IV plans at this time and is thus proposing to begin by making participation in the missing participants program voluntary for such plans. After PBGC has gained experience with a voluntary reporting requirement and the clearinghouse of lost retirement benefits that the requirement supports, PBGC will be in a better position to weigh the additional costs of mandatory reporting against the additional benefits of a more fully supported lost-benefits registry.

Non-title IV plans that elected to send benefit transfer amounts to PBGC would be referred to as "transferring" plans; those that made other dispositions of the benefits of missing distributees and elected to send PBGC information about the dispositions would be called "notifying" plans. A notifying plan would have to identify the missing distributee(s) covered by the election.

Notifying plans could provide information for fewer than all of their missing distributees. PBGC is concerned, however, about the possibility of "cherry-picking"—that is, selective use of the missing participants program—by transferring plans. For example, a plan might turn over all its small accounts to PBGC, while larger accounts that can generate larger maintenance fees for commercial individual retirement plan providers might be turned over to private-sector institutions that charge asset-based fees. PBGC is proposing that if a non-title IV plan *voluntarily* participates in the missing participants program as a transferring plan, it may not pick and choose the missing distributees whose benefits it turns over to PBGC. A transferring plan would be required to turn over to PBGC benefits for *all* missing distributees. Transferring benefits for fewer than all missing distributees would not be allowed. PBGC invites public comment on the validity of its concerns about cherry-picking and on its proposal for dealing with those concerns.

The options and duties sections for non-title IV plans would describe these options. Plan elections would have to be made in accordance with PBGC's missing participants forms and instructions.

Search and Filing Functions

In addition to dealing with options for non-title IV plans, the options and duties sections would mention the two major duties of plans under each subpart of the regulation: Diligently searching for missing participants and filing with PBGC. Cross-references would lead the reader to the sections where these two duties are described more specifically.

Compliance and Audit

Title IV gives PBGC tools for dealing with non-compliance by covered plans. Although the proposed regulation would not delineate any authority for PBGC to impose sanctions on non-covered plans, PBGC could audit relevant plan and employer records if it reasonably suspected substantial noncompliance. Audit findings could form the basis for a referral to EBSA or IRS for appropriate action.

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[17] These are plans that would be described in section 4021 of ERISA but for section 4021(b)(1), (5), (12), and (13) of ERISA and that could transfer benefits to PBGC in money (even if stock were used for other purposes) including plans described in section 403(b) of the Code under which benefits are provided through custodial accounts described in section 403(b)(7) of the Code. PBGC's reading of section 4050(d)(4) of ERISA as plausibly encompassing certain plans described in section 403(b) of the Code applies with respect to title IV of ERISA only and should not be read to suggest that the Internal Revenue Service would interpret this language similarly with respect to the application of sections 401(a) and 403(b) of the Code or for any other purpose under the Code.

[18] These are plans that would be described in section 4021 of ERISA but for section 4021(b)(13) of ERISA.

Diligent Search

The next section of each subpart of the proposed missing participants regulation would deal with diligent searches. Again, there would be different provisions for different types of plans, but here the distinction would be between DB plans (that is, single-employer and multiemployer plans covered by title IV and professional service DB plans not covered by title IV) and DC plans. For DC plans, PBGC proposes to specify simply that a diligent search is one conducted in accordance with DOL guidance (including regulations) under section 404 of ERISA. This proposed standard is intended to harmonize PBGC's missing participants program for terminated DC plans with DOL's guidance for terminated DC plans so that compliance with that guidance would satisfy PBGC's "diligent search" standards.[19]

The search standards for DB plans would be based on the requirements in the existing regulation with modifications inspired by the guidelines in the FAB. PBGC's current diligent search rules for single-employer DB plans covered by title IV impose three requirements: timeliness, seeking information from beneficiaries of a missing participant, and use of a commercial locator service. The timeliness requirement is cast in terms of milestones in the standard termination process under title IV. In the interest of uniformity for all DB plans participating in PBGC's missing participants programs, including DB plans not covered by title IV, PBGC proposes to substitute for the current timeliness standard a simple requirement that a diligent search be made during a six-month period before the plan closes out and the benefit transfer amount is paid. This same requirement would apply to DC plans. PBGC invites comment on the appropriateness of this standard and suggestions for alternatives.

PBGC proposes to make the other two existing search requirements for DB plans more specific. The first of the two currently calls for seeking the missing individual through the individual's plan beneficiaries. PBGC proposes to replace this with a more detailed and specific series of requirements to seek information from records not just of the plan that is closing out, but of the employer and other plans of the employer as well (including health plans), and to mine these sources for information to locate the missing individual as well as leads to beneficiaries.[20] The records search requirements include an explicit "do your best" rule for situations where employers, plans, beneficiaries, or records may not be readily identifiable or obtainable (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information).

The last of the current search requirements for DB plans is the use of a commercial locator service. The existing regulation does not expand on the meaning of the term "commercial locator service." PBGC proposes to define a commercial locator service as a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)). This proposed requirement is designed to ensure a more robust search, but might not be cost-effective for distributees with relatively small benefits. PBGC proposes to address this issue by reserving to itself the authority to place limits in the missing participants forms and instructions on the requirement to use a commercial locator service. PBGC invites comment on this subject, including commenters' views on whether a waiver should be based on the monthly amount of a distributee's benefit or the present value of the benefit or on some other criterion and on whether the waiver should be codified in the regulation.

PBGC is also proposing to add a requirement for DB plans to use a no-fee internet search engine or method regardless of benefit size. For situations where the commercial locator service requirement might be waived, this new search provision would round out the records search requirement without imposing the cost of a commercial locator service.

These requirements are designed to support the basic function of a diligent search—to demonstrate that an appropriate level of effort has gone into finding a person who remains missing. A plan that uses PBGC's missing participants program to provide for the benefits of a person whose whereabouts are unknown must have followed all of the search requirements.[21]

PBGC's proposal attempts to bring its existing diligent search rules for DB plans into closer alignment with the search guidance in the FAB. PBGC believes that DB plans will welcome a more explicit and concrete "checklist" of search steps. PBGC has attempted to strike a balance between thoroughness on the one hand and, on the other hand, ease of plan compliance and PBGC administration (including PBGC review and audit of plans' missing participants submissions). PBGC specifically seeks comment on whether DB plans would be better served by a different or less prescriptive search standard.

Amounts To Be Transferred

As explained above (in Terminology), the amount paid to PBGC for a missing distributee could be composed of as many as three amounts: A fee, a benefit transfer amount, and (for some DB plan missing distributees) a plan make-up amount. The latter two amounts would be described in the definitions section of each subpart (except that there would be no definition of "plan make-up amount" for DC plans). These "pay-in" rules would be significantly different from those under the current regulation.[22]

Current Rules (DB Plans)

For single-employer plans covered by title IV insurance, ERISA section 4050 prescribes rules to follow in valuing a missing distributee's benefits to determine the amount to pay[23] PBGC for the distributee. The rules for valuing benefits under the missing participants program are different for different categories of benefits. The statute describes three benefit categories: "*de minimis*" benefits that a plan could lawfully cash out without consent; benefits payable only as annuities; and benefits for which cash-out is elective. Under section 4050, a plan is to use its own lump sum assumptions to value benefits in the first category; PBGC missing participant assumptions for those in the second category; and for the third category, whichever of the two sets of assumptions produces the greater present value.

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[19] A distribution generally is permitted under the Department of Labor's safe harbor regulation with no additional search beyond the notification sent to the last known address of the participant or beneficiary in accordance with the requirements of 29 CFR 2520.104b–1(b)(1). If a notice is returned to the plan as undeliverable, the plan fiduciary must, consistent with its duties under section 404(a)(1) of ERISA, take steps to locate the participant or beneficiary and provide notice before making the distribution. See the FAB for guidance on search steps.

[20] The new procedures are consistent with corresponding guidance in the FAB.

[21] The unknown beneficiary of a known deceased participant is clearly missing, but PBGC will take into account the fact that there is no known person to search for in evaluating the plan's fulfillment of the diligent search requirement for any such distributee.

[22] The benefit transfer amount and plan make-up amount (if any) for a distributee who is the unknown beneficiary of a known deceased participant would be calculated in the same way as for any other distributee, but reasonable assumptions about unknown data such as age could be used.

[23] The term "pay" in connection with the benefit transfer amount or plan make-up amount is not used in a compensatory sense.

Expanding on the statutory requirements, the current missing participants regulation describes four categories of benefits and prescribes a different valuation method for each category. The four benefit categories are arrived at by breaking the first statutory category into two: Benefits actually subject to mandatory cash-out under plan terms, and benefits that could be involuntarily cashed out under the law but not under plan terms. The four valuation methods are arrived at by prescribing two sets of PBGC missing participant assumptions (rather than one)—"missing participant lump sum assumptions" and "missing participant annuity assumptions." [24]

While the "missing participant lump sum assumptions" and "missing participant annuity assumptions" under the current regulation differ from each other, they are both based to some degree on the plan termination assumptions in PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044), which are designed to reflect annuity market conditions and are based on data reported by commercial annuity providers. The "missing participant annuity assumptions" are much closer to matching the "4044 assumptions" in the asset allocation regulation, but both the "missing participant lump sum assumptions" and "missing participant annuity assumptions" omit the expected retirement age (XRA) assumptions that are part of the 4044 assumptions. The "missing participant annuity assumptions," which do not include the adjustment for expenses under the 4044 assumptions, do include an "adjustment (loading) for expenses" of $300 for each benefit with a value over $5,000.

Whichever assumptions are used, the current regulation specifies that they are to be applied to the most valuable benefit. Thus the plan must value each benefit separately for a starting date in each year out into the future in order to find the one that is most valuable.

Proposal—DB Plans

For DB plans, PBGC is proposing to simplify the existing rules. The proposal would abandon the four-category approach in the current regulation in favor of a three-category approach consistent with that of the statute. PBGC is further proposing to abandon the "missing participant lump sum assumptions" and to modify the "missing participant annuity assumptions," which would be called "PBGC missing participant assumptions."

The PBGC missing participant assumptions would include no adjustment for expenses [25]—neither the adjustment that is part of the 4044 assumptions nor the load that is part of the missing participant annuity assumptions in the current regulation. Mortality and interest under the new assumptions would be the same as under the old assumptions, except that the interest assumption in effect for valuations in January would be used for the entire calendar year.

Pre-retirement death benefits would be disregarded; the benefit to be valued would be a straight life annuity beginning at XRA.[26] Using XRA would replace the requirement to value the benefit at every age to determine the most valuable benefit and make the new assumptions more like the 4044 assumptions.

PBGC plans to create an on-line spreadsheet to enable a plan to value a missing participant's benefits with the new "PBGC missing participant assumptions." A plan would simply enter data such as eligibility for early and unreduced retirement and benefit amounts, and the spreadsheet would do the calculations—including XRA calculations—necessary to determine the present value of benefits, thus making the new "PBGC missing participant assumptions" easier to use.

A plan that pays no lump sums (even for *de minimis* amounts) would have no "plan assumptions" for lump sums. Under the current regulation, such plans use "missing participant lump sum assumptions" to value all benefits that could lawfully be cashed out. With the elimination of the "missing participant lump sum assumptions" and the associated benefit valuation category, the proposed regulation provides that such plans should use assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code (dealing with determination of whether the present value of a benefit is *de minimis*).

Under the proposal, benefits would be valued as of the date the benefit transfer amount is paid to PBGC (the "benefit transfer date").[27] PBGC invites comment on this point. Valuing benefits as of the benefit transfer date would eliminate the need for the rules in the current regulation about interest on transfers to PBGC between the valuation date and the payment date, since those two dates would be the same.

As discussed above (under Terminology), plans would account separately for the value of benefits payable in the future (the "benefit transfer amount") and the value of benefit payments missed in the past (the "plan make-up amount"). Under the proposal, the value of a missed payment would be the accumulated value of the payment (reflecting interest from the date the payment was due to the date of the plan's payment to PBGC), without reduction for mortality—that is, on the assumption that the annuitant was alive. Interest would be calculated in the same way as for underpayments of guaranteed benefits by PBGC under PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) using the Federal mid-term rate described in section 1274(d) of the Code with monthly compounding.[28] PBGC would use the same interest assumption for crediting interest between the date of receipt of a payment from a plan and the date of payment of a lump sum by PBGC. This rate, which would be called the "missing participants interest rate," is the same rate prescribed in the current missing participants regulation as the "designated benefit interest rate."

The plan make-up amount would include not only missed payments to distributees who became missing after they had begun to receive benefit payments, but also payments not made after the required beginning date under Code section 401(a)(9)(C).

For single-employer DB pension plans that are not covered by the existing program, PBGC's missing participants program is optional. Thus one concern is whether the new program would find favor among DB plans not covered by title IV. If it did not, PBGC expects that the impact on the program would be slight because there are few such plans. Nonetheless, PBGC invites comment reflecting the views of non-covered DB plans on how attractive participation in the proposed missing participants program would be for such plans.

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[24] Under the current regulation, benefits actually subject to mandatory cash-out under plan terms are to be valued using plan assumptions. Benefits that could be involuntarily cashed out under the law but not under plan terms are to be valued using the "missing participant lump sum assumptions." Benefits not subject to either voluntary cash-out under the plan or mandatory cash-out under the statute are to be valued using the "missing participant annuity assumptions." Finally, benefits that could not be involuntarily cashed out under the law but for which a lump sum option is available are to be valued using either the "missing participant annuity assumptions" or plan assumptions, whichever produces the greater value. Among missing participants whose benefits are transferred to PBGC under the current program, about 87 percent have benefits that are *de minimis* under plan or PBGC assumptions.

[25] See *Fees* below for a discussion of fees.

[26] Special "XRA" rules would apply to pay-status distributees and non-participant distributees.

[27] PBGC anticipates that a plan will generally have a single benefit transfer date for all missing distributees, but in unusual circumstances (such as where benefit computation errors are corrected), multiple benefit transfer dates may be necessary.

[28] Interest calculations could be incorporated in the on-line spreadsheet discussed above.

Proposal—DC Plans

For DC plans, the benefit transfer amount would be the amount available for distribution to the missing distributee. For a missing distributee who was a participant, this would generally be the participant's account balance, but might not be if (for example) a qualified domestic relations order (QDRO) required distribution of a portion of the account to another person.

PBGC recognizes that the benefit transfer amount—the account balance—for a DC plan missing distributee also might (but might not) reflect the deduction of expenses. DC plans may (but need not) pay administrative expenses from participants' accounts, consistent with applicable law and relevant plan provisions. Such administrative expenses might include, for example, the cost of conducting a diligent search or the cost of paying PBGC fees for participating in the missing participants program. PBGC will not inquire into whether an account balance has been reduced for administrative expenses before it was transferred to PBGC. Whether or not plan termination expenses were properly allocated among all plan participants by the plan's fiduciary before the transfer is beyond the scope of this proposal.

Fees

PBGC proposes to charge fees for participation in the missing participants programs. Consonant with 31 U.S.C. 9701 (dealing with fees and charges for Government services and things of value), fees for participation in PBGC's missing participants programs would be fair and be based on PBGC's costs, the value of the programs to plans and participants, policy considerations (such as the interests of participants and beneficiaries, encouraging plan participation in the programs, and due regard for private-sector providers' concerns), and other relevant concerns. PBGC contemplates that fees would cover the costs of essential services such as periodic searches for missing distributees, tracking distributees' accounts, and processing benefit payments.

Fees would be set forth in the missing participants forms and instructions and thus, like information submission requirements and similar matters, would be subject to public notice and comment under the Paperwork Reduction Act. PBGC is proposing to charge a one-time $35 fee per missing distributee, payable when benefit transfer amounts are paid to PBGC, without any obligation to pay PBGC continuing "maintenance" fees or a distribution fee. There would be no charge for amounts transferred to PBGC of $250 or less. There would be no charge for plans that only send information about missing participant benefits to PBGC. Setting fees is necessarily a forward-looking exercise. Fees set today are collected tomorrow, in tomorrow's environment of costs and usage. PBGC therefore would adopt a fee structure that would make sense in light of circumstances that would exist when the fees were paid. To do this, PBGC would from time to time estimate its projected costs and the projected usage of the missing participants programs—much as must be done for purposes of the Paperwork Reduction Act. Patterns of past experience inform predictions of future experience and changes in methodology may be appropriate as PBGC's experience and views of the future program change. PBGC intends to provide public notice of all proposals to set and adjust fees, in accordance with the Paperwork Reduction Act.

PBGC's proposed methodology for setting future fees under the missing participants program incorporates the following elements and principles:

(1) PBGC will set fees in a manner consistent with the requirements of 31 U.S.C. 9701 and relevant guidance of the Office of Management and Budget[29] and the Government Accountability Office.[30]

(2) PBGC will set fees with a view to collecting, on average and over time, no more than its out-of-pocket costs for the services of private-sector contractors to perform non-governmental functions in support of the missing participants program. PBGC will not seek to recover through fees the value of in-house performance of governmental functions by government employees.

(3) For purposes of projecting estimated contractor costs, PBGC will use cost-smoothing methods and will break such costs down into two categories:

(i) System costs—that is, costs of establishing, maintaining, modifying, updating, and replacing hardware, software, and other infrastructure items—but only to the extent used in support of the missing participants program—will be amortized over five years.

(ii) Processing costs—that is, costs for labor, office supplies, utilities, and other ephemeral items charged PBGC by its contractor—will be treated as incurred and satisfied currently.

(4) PBGC will set fees as one-time charges, payable when benefit transfer amounts are paid to PBGC, without any obligation to pay PBGC continuing "maintenance" fees or a distribution fee. Fees will not be charged for reporting to PBGC the disposition of benefits where no amount is transferred to PBGC.

Concurrently with publication of this proposed rule, PBGC is submitting to the Office of Management and Budget, and posting on its Web site (*www.pbgc.gov*), an initial proposal for forms and instructions for the missing participants programs, including fees. The proposal includes instructions for submitting public comments on the fee schedule and other aspects of the proposal.

Filing With PBGC

Basic filing rules would be the same under the proposal as under the existing regulation.

The filing deadline for title IV single-employer plans would be similar to that under the current regulation: 90 days after the distribution deadline in PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041). (For plans undergoing sufficient distress terminations, the distribution deadline reflects such plans' special circumstances.) For all other plans, the filing deadline would be 90 days after completion of all distributions not subject to the missing participants program.

Pay-Out Rules

Common Features

Although (as discussed below) the DB and DC pay-out rules would differ significantly, they would share some basic principles. One principle that would carry over from the existing regulation is that PBGC would receive money for the benefits of some missing distributees but only information about the benefits of others. As under the current program, therefore, there would be two ways PBGC might connect claimants with their benefits. PBGC might pay benefits itself (where PBGC has received a benefit transfer amount from the claimant's plan) or might provide information to the claimant from the plan about how benefits not transferred to PBGC can be claimed (for example, where they have been annuitized with an insurer or transferred to an IRA or bank account). The proposed regulation would modify the language about PBGC's providing information to clarify that PBGC's role in such circumstances (which is subject to the Privacy Act) does not include resolution of questions about entitlement to a benefit held by another entity (such as an insurance company). Those questions, and questions about revealing personal information about such a missing participant to a different claimant, are more properly resolved by the entity (for example, insurer or custodian) holding the benefit.

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[29] See OMB Circular A–25, User Charges, *https://www.whitehouse.gov/omb/circulars_a025.*

[30] See GAO reports numbers GAO–12–193, User Fees: Additional Guidance and Documentation Could Further Strengthen IRS's Biennial Review of Fees, *http://www.gao.gov/assets/590/586448.html,* and GAO–08–386SP, Federal User Fees: A Design Guide, *http://www.gao.gov/assets/210/203357.pdf.*

A second principle the DB and DC programs would share is that the pay-out rules are organized based on the circumstances of the missing distributee. The current regulation's pay-out rules are grouped according to the type of annuity benefit valued by the plan, an organizational principle that would not work for DC plans and that PBGC has found potentially confusing. Under the new organization, DB and DC pay-out rules would begin by describing what would happen if a missing participant showed up to claim benefits. The form and amount of the participant's benefit would be determined based on the size of the benefit and the participant's marital status. The rules then describe the form and amount if the missing participant died and a survivor claimed benefits (again depending on size of benefit and marital status).

PBGC is not proposing any pay-out rules for situations involving participants whose benefits went into pay status under the plan before they became missing. Nor is PBGC proposing pay-out rules for situations—under either DB or DC plans—involving missing beneficiaries (such as situations involving missing alternate payees or situations where a plan knows a participant is dead and has a beneficiary, but the beneficiary is missing). PBGC considers such circumstances sufficiently uncommon that the new regulation need not address them. PBGC invites public comment about whether the regulation should address such circumstances and if so, how.

Another new concept common to both DB and DC plans would be that of "qualified survivors," who would be entitled to benefits with respect to a missing participant in situations involving—for example—deceased missing participants without spouses. PBGC would identify qualified survivors by looking first to provisions of any applicable QDRO; then (for DC plans), PBGC would look to the plan's filing with PBGC for identification of persons potentially entitled to benefits with respect to the decedent under plan provisions (including beneficiary designations consistent with plan provisions); finally, if the plan's filing did not identify a person entitled to benefits with respect to a decedent, PBGC would refer to a list of relatives that would echo § 4022.93 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, but would include just four categories[31]: spouses, children, parents, and siblings.[32] As a practical matter, qualified survivors under DC plans would generally be those identified by the plan by reference to plan rules and related beneficiary designations, spousal waivers, etc.; only in unusual cases would DC qualified survivors be identified by reference to the list of relatives that would typically govern in DB cases.

Finally, for both DB and DC plans, the proposed regulation would not deal (as the current regulation does) with details such as election of annuity starting dates, which would be left to policies and procedures and be reflected in PBGC's missing participants forms and instructions.

Although PBGC has achieved some measure of uniformity in details surrounding the pay-out rules, the substantive rules themselves would differ significantly between DC and DB plans: for DC plans, a simple approach that steers away from the details of plan provisions, and for DB plans a more detail-oriented approach that imports some plan rules into the missing participants program with a view to preserving some significant rights of participants under DB plans.

New DB Plan Pay-Out Rules—at a Glance

The proposed DB plan payout rules would preserve two material features if available under a participant's plan: Early retirement subsidies and elective lump sums. In other respects, PBGC would apply benefit determination principles that would be uniform for all missing participants, regardless of their individual plan provisions. The main features of the proposed new DB pay-out rules may be summarized as follows:

- Mandatory lump sums paid if the amount transferred to PBGC is $5,000 or less.
- A variety of annuity payment forms available if the amount transferred to PBGC is over $5,000.
- Elective lump sums available if available under the plan and the amount transferred to PBGC is over $5,000.
- Amount of a lump sum equal to the amount transferred to PBGC plus interest.
- Spousal consent required for payment forms other than a joint and 50 percent survivor annuity if the amount transferred to PBGC is over $5,000.
- Annuity starting dates limited to the period from participant's age 55 to participant's required beginning date if the amount transferred to PBGC is over $5,000.
- Amount of a straight life annuity starting at an exact age equal to the amount reported by the plan; linear interpolation used for starting dates other than exact ages; amounts of other annuity forms determined using PBGC conversion methodology.
- Annuity payments starting after the required beginning date calculated as if the annuity began at the required beginning date, with missed payments received as a lump sum with interest.
- Pre-retirement death benefits available if a married missing participant dies before the required beginning date; but not if the participant is unmarried.
- Post-retirement death benefits available if a missing participant dies after the required beginning date (whether married or not).

New DB Plan Pay-Out Rules—in More Detail

One notable new rule for DB pay-outs—flowing from the principle of preserving certain material rights under plans—would be that PBGC would no longer compute annuity benefits for a participant as the actuarial equivalent of the benefit transfer amount, but rather would provide annuity benefits based on what the plan would have provided, including in particular any early retirement subsidies to which participants would have been entitled had they not been missing. This would be made possible by requiring a plan to report the straight life annuity payable to the participant commencing at each exact age from age 55 to age 70 and at the participant's required beginning date.

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[31] The proposal does not include on this list the two other categories of § 4022.93 which are: Estates, if open, and next of kin in accordance with applicable state law.

[32] In PBGC's view, this terminology includes adoptive relationships (but not "step" relationships); thus the terminology is used without qualifying adjectives (such as "natural or adopted").

PBGC would use linear interpolation to calculate straight life annuities commencing between exact ages.[33] To deal with situations where a benefit entitlement might increase non-linearly, PBGC would inform benefit applicants what the benefit level at the next exact age would be.

If the annuity PBGC paid a participant was not a straight life annuity, the payments would be set to make the benefit actuarially equivalent to the straight life annuity that would have been payable starting at the same time. If, on the other hand, PBGC paid a lump sum, it would be equal to the amount transferred to PBGC plus interest. Non-*de minimis* lump sums would be available where plans provided for them (as most plans do). PBGC would pay *de minimis* benefits as lump sums.

Plan features of lesser significance, which PBGC does not consider it administratively feasible to preserve, would include annuity conversion factors, eligibility for pre-retirement death benefits, and earliest retirement age. As to these features, PBGC proposes to treat all distributees the same, regardless of plan terms.

For example, to convert from the straight life annuity form to any other of the variety of annuity forms PBGC would make available, PBGC would use the actuarial assumptions under its regulation dealing with optional forms of benefit in trusteed plans (29 CFR 4022.8(c)(7)). While lump sums—where available—would be payable at any age, annuities would not be paid before a participant's age 55. Spousal consent would apply if a participant wanted to receive a non-*de minimis* benefit in any form other than a joint and 50-percent survivor annuity. In situations requiring spousal consent to payment of a lump sum before age 55, PBGC would provide the spouse with information on all available payment options for his or her consideration, including annuity benefits available from age 55 through 65.

The following table summarizes the DB pay-out rules under the proposed regulation.[34]

Circumstances	Proposed regulation
Living participant with *de minimis* benefit	PBGC pays participant a lump sum.
Living participant with non-*de minimis* benefit; no living spouse	PBGC pays participant an annuity in form elected by participant or, if plan so provided and participant so elects, a lump sum.
Living participant with non-*de minimis* benefit; living spouse	PBGC pays participant a joint and 50 percent survivor annuity (or at participant's election with spousal consent, another form of annuity) or, if plan so provided and participant so elects with spousal consent, a lump sum.
Deceased participant; no surviving spouse	If participant died before required beginning date, PBGC pays no benefit; if participant died after required beginning date, PBGC pays qualified survivor(s) missed payments from required beginning date with interest.
Deceased participant with *de minimis* benefit; living spouse	PBGC pays spouse a lump sum equal to value of survivor portion of joint and 50 percent survivor annuity (including missed payments).
Deceased participant with non-*de minimis* benefit; living spouse	PBGC pays spouse survivor portion of joint and 50 percent survivor annuity (including missed payments); except that if value of spouse's benefit is small (*i.e.,* less than $5K), PBGC pays spouse an equivalent lump sum.
Deceased participant; deceased surviving spouse	PBGC pays qualified survivor(s) of participant and spouse the missed payments participant and spouse would have received under a joint and 50 percent survivor annuity.

Some other details about the proposed new DB rules: Annuities would generally be deemed to begin no later than the required beginning date under Code section 401(a)(9)(C); if payment began later, missed payments with interest (make-up amount) would be paid in a lump sum. If the participant died before the required beginning date, the survivor annuity would be deemed to begin on the later of the participant's 55th birthday or date of death. If the participant died on or after the required beginning date, the survivor annuity would be deemed to begin at the required beginning date. For missing participants under contributory plans, PBGC would pay benefits (including pre-retirement death benefits) at least equal to the accumulated mandatory employee contributions.

DC Plan Pay-Out Rules

The DC pay-out rules would be relatively simple. The following table shows the DC pay-out rules under the proposed regulation.[35]

Circumstances	Proposed regulation
Living participant with *de minimis* benefit	PBGC pays participant a lump sum.
Living participant with non-*de minimis* benefit; no living spouse	PBGC pays participant an annuity in form elected by participant or, if participant so elects, a lump sum.
Living participant with non-*de minimis* benefit; living spouse	PBGC pays participant a joint and 50 percent survivor annuity (or at participant's election with spousal consent, another form of annuity) or, if participant so elects with spousal consent, a lump sum.
Deceased participant with *de minimis* benefit	PBGC pays qualified survivor(s) a lump sum.
Deceased participant with non-*de minimis* benefit; no surviving spouse	PBGC pays qualified survivor(s) a lump sum.

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[33] For example, a monthly benefit starting at age 55¾ would be 75 percent of the age 56 amount plus 25 percent of the age 55 amount.

[34] A *de minimis* benefit is the sum of the participant's benefit transfer amount and the plan make-up amount (if any) that does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, currently $5,000.

[35] A *de minimis* benefit is the missing distributee's benefit transfer amount that does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, currently $5,000.

Circumstances	Proposed regulation
Deceased participant with non-*de minimis* benefit; living spouse	PBGC pays spouse a straight life annuity or, if spouse so elects, a lump sum.

Lump sums would include interest at the federal mid-term rate. Conversions to annuities would be made using assumptions under section 205(g)(3) of ERISA and section 417(e)(3) of the Code. For elections before the participant's age 55, PBGC would provide information on all available payment options for the individual's consideration, including annuity benefits.

Limitations and Special Rules; PBGC Discretion

It is impossible to anticipate and appropriately provide for every state of events in an undertaking like the missing participants program. To preserve as much flexibility as possible while treating like cases in like manner, PBGC proposes to incorporate in each subpart of the missing participants regulation a section authorizing it to grant waivers, extend deadlines, and in general adapt to unforeseen circumstances, with the proviso that similar treatment be given to similar situations. This provision would take the place of current § 4050.12(g).

However, most of the special provisions in §§ 4050.11 and 4050.12 of the current regulation would be omitted as unnecessary or inappropriate:

- References to the maximum benefit under Code section 415 (if any) (§ 4050.5(a) of the existing regulation) and the minimum benefit under a contributory plan (§ 4050.12(c)(1)). Those limitations apply to the provisions and administration of plans generally and are not specific to the missing participants program.
- The exclusive benefit provision in § 4050.11(a) and the limitation on benefits to the amount transferred to PBGC by a plan for a missing participant (§ 4050.11(a) and (b)). The first of these seems unnecessary and the second would no longer be true.
- Relationship of benefits paid to the guaranteed benefit (§ 4050.11(c)), benefits payable in a sufficient distress termination (§ 4050.12(e)), and benefits payable on audit or other events (§ 4050.12(f)).
- Limitations on the annuity starting date (§ 4050.11(d)). PBGC would plan to deal with such matters in its policies for administering the expanded missing participants program.
- Disposition of voluntary contributions (§ 4050.12(c)(2)) and residual assets (§ 4050.12(d)).
- Provisions regarding missing participants located quickly by PBGC (§ 4050.12(a)). This provision has not been used, and PBGC believes that enforcement measures where a plan misrepresents its compliance with diligent search requirements will be more effective than this provision.
- QDROs (§ 4050.12(b)). PBGC proposes to provide in the pay-out rules that allowance be made for QDROs.
- Payments beginning after the required beginning date (§ 4050.12(h)). This subject is dealt with in the benefit pay-out provisions.

The current regulation provides that PBGC will determine the treatment of residual assets (assets not needed to satisfy plan benefits). The proposal does not deal expressly with this issue (which arises under subparts A and C). PBGC solicits public comment on the appropriate way to deal with excess assets.

Related Regulatory Amendments

In General

PBGC proposes to make conforming amendments to its regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000), Terminology (29 CFR part 4001), Termination of Single-Employer Plans (29 CFR part 4041), and Termination of Multiemployer Plans (29 CFR part 4041A).

Administrative Review

PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) sets forth the determinations, listed in § 4003.1(b), for which aggrieved persons are required to seek administrative review, (*i.e.*, in the form of administrative appeals or reconsiderations) before they may seek judicial review. Section 4003.1(b)(11) applies to the missing participants program. Subparagraph (i) of § 4003.1(b)(11) relates to a determination about the benefits payable by PBGC based on the amount paid to PBGC under the program (assuming the amount paid to PBGC was correct). Subparagraph (ii) of § 4003.1(b)(11) relates to a determination as to the correctness of an amount paid to PBGC under the program (to the extent that the benefit to be paid does not exceed the guaranteed benefit).

The proposal would change § 4003.1(b)(11) by revising the content of paragraph (b)(1)(i) and eliminating paragraph (b)(1)(ii). Therefore section 4003.1(b)(11), as proposed, no longer has two subparagraphs. Proposed § 4003.1(b)(11) does not refer to benefits based on an amount paid to PBGC, because, in some cases benefits paid by PBGC under the new programs would be monthly annuities based on information, such as calculations, reported by the plan, not on amounts paid to PBGC. Thus, an appeal right based on a determination pursuant to proposed § 4003.1(b)(11) would relate simply to a determination of the benefit payable under section 4050 of ERISA and the missing participants regulation.

An appeal based on a determination made under current regulation § 4003.1(b)(11)(ii)—that the right amount was paid to PBGC—would no longer be permitted under the proposal. PBGC does not make determinations about the amounts to be transferred to PBGC by plans under the missing participants program; rather, it is plans themselves that determine how much to transfer. Thus, there is no PBGC action for a person to be aggrieved by or for PBGC to revoke or change. Recourse must be against the plan or, if the plan no longer exists, the plan sponsor. If a claimant's benefit is guaranteed by PBGC, and the claimant is unable to collect from the plan or sponsor, the claimant may have a right to payment of the guaranteed benefit by PBGC, and a dispute about PBGC's determination of the amount of that benefit is subject to the requirement to pursue administrative review under § 4003.1(b)(8).

Applicability

PBGC proposes to make the amendments in this proposed rule applicable to termination of a plan other than a multiemployer plan covered by title IV where the date of plan termination is after calendar year 2017. PBGC proposes to make the amendments in this proposed rule applicable to the close-out of a multiemployer plan covered by title IV where the close-out is completed after calendar year 2017.

The amendments in the proposed rule would not apply to PBGC's payment of missing participant benefits attributable to prior terminations. Thus the provisions of the existing regulation would continue to have vitality indefinitely for a dwindling group of missing distributees whose plans terminated before the proposed rule became applicable.

Executive Orders 12866 and 13563

PBGC has determined that this rulemaking is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget has therefore reviewed this proposed rule under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 12866 and 13563 require a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. PBGC has determined that this proposed rule does not cross the $100 million threshold for economic significance and is not otherwise economically significant. However in accordance with section 6(a)(3)(B) of Executive Order 12866, PBGC has examined the economic and policy implications of this proposed rule and has concluded that the action's benefits justify its costs.

PBGC's economic analysis of the proposed rule focuses on single-employer title IV DB plans and on DC plans. There are just a handful of multiemployer plans that might make use of the expanded scope of section 4050, and PBGC expects that few DB plans not covered by title IV will participate in the new program.

As discussed in more detail in the Paperwork Reduction Act section below, PBGC is projecting that this rule would increase program participation from 200 to 3,300 plans. Thus, about 94 percent of the paperwork burden would be attributable to this rule. The dollar burden of the information collection associated with the rule is about $829,000. The dollar equivalent of the 1,320-hour time burden is estimated at about $32,000. This estimate is based on the following assumptions:

- Wage rates account for approximately 70 percent of total labor costs, with the remaining 30 percent attributable to benefits costs.[36]
- The hours will be primarily performed by office and administrative support staff (occupational code 43–0000), at a mean hourly cost of $24.40 (an hourly wage rate of $17.08 plus $7.32 in benefits).[37]

Thus the monetized burden of the paperwork associated with the missing participants programs under the proposed rule would be about $861,000, and the portion attributable to changes made by the rule would be about $809,000 (94 percent of $861,000).

There would be no other additional costs for DC plans. The diligent search requirements for DC plans would be the same requirements that already apply to these plans without regard to their participation in the missing participants program. Unlike DB plans, DC plans would be subject to no special benefit valuation rules.

The proposed rule would, however, change the requirements for diligent searches and benefit valuation for DB plans. But the marginal cost of complying with the new valuation rules would be negligible because of the on-line spreadsheet that PBGC plans to make available. For diligent searches, PBGC is assuming an additional cost of $500 per plan, primarily to cover the expense of commercial locator services. While use of such services has been required under the current regulation, the absence of a definition of "commercial locator service" has meant that plans had latitude to use services that charged little or nothing. The proposed rule would set a standard for such services that PBGC assumes would come with a price tag. DB plans might also have to do more record-searching than they do now, although PBGC expects that most records will be electronic and relatively easy to search. The assumed additional search cost was arrived at by assuming that a basic commercial locator service would charge $40 per search for the assumed average of ten missing participants per plan (total $400) and adding $100 per plan for record searches. Multiplying this additional $500 per-plan search cost by 200 plans yields a total additional search cost attributable to the proposed rule of $100,000.

Beyond this $909,000 in additional costs attributable to the proposed rule ($809,000 in additional reporting costs and $100,000 in additional search costs), the rule would provide for fees to be paid to PBGC to cover contractor costs of running the missing participants programs, *i.e.*, collecting, accounting for and entering data from missing participant forms, searching for missing distributees, paying benefits, etc. PBGC would set fees at levels not exceeding its costs. After considering various fee structures, PBGC has proposed a flat fee that would be simple to understand and easy for plans to administer. Based on preliminary data, PBGC estimates that fees would be a one-time $35 charge per missing distributee for amounts transferred to PBGC, with no charge for amounts transferred of $250 or less. (See the earlier discussion in this preamble under "Fees".) Based on a combined DB and DC count, PBGC estimates 10,955 missing participants per year. Fourteen percent of such participants (approximately 1,533 out of the 10,955) are estimated to have cash benefits of $250 or less, and therefore no fee would be charged for transferring amounts of these missing participants. That leaves 9,422 accounts charged a one-time $35 fee, amounting to an estimated total of $329,770 in fees. Combined with the $909,000 in additional costs to DB plans attributable to the proposed rule, total burden would equal $1.2 million.

To compare the total burden of the proposed rule to the benefits that would be gained, for fiscal years 2013 to 2015, PBGC paid out about $2.27 million a year in missing participant benefits. This dollar amount would presumably be much higher in the future because of the vast (about 16-fold) increase in the number of plans expected to participate in the missing participants programs. If PBGC paid out merely ten times in benefits what it did for fiscal years 2013–2015, the benefits recovered by missing participants and their beneficiaries would be over $22 million. This is more than $20 million higher than the additional burden that would be placed on plans by the proposed rule. PBGC believes that although it cannot more precisely quantify the cost-benefit comparison in this proposed rule, it is clear that benefits would far exceed costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on the impact. Small entities include small businesses, organizations and governmental jurisdictions.

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[36] Employer Costs for Employee Compensation news release text, *http://www.bls.gov/news.release/ecec.nr0.htm* (see first paragraph).

[37] Occupational Employment and Wages, May 2014, 43–0000 Office and Administrative Support Occupations (Major Group), *http://www.bls.gov/oes/current/oes_nat.htm* (see "Office and Administrative Support Occupations").

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is consistent with certain requirements in title I of ERISA[38] and the Internal Revenue Code,[39] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[40]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities.

Certification

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on PBGC's estimate (discussed above) that the economic impact of the proposed amendments on any entity would be insignificant. PBGC believes that the expanded missing participants program will be particularly helpful to small DC plans and that the improvements to the existing program will be helpful to small DB plans. PBGC invites public comment on this assessment.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. The collection of information under the missing participants regulation is currently approved under OMB control number 1212–0036 (expires November 30, 2017). That control number also covers PBGC's information collection on plan termination. PBGC is seeking paperwork approval of the new missing participants regulation under a new control number.

Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW., Washington, DC 20005, 202–326–4040. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC needs the information submitted by plans under part 4050 to identify the entities that are to provide benefits with respect to missing distributees whose benefits are not transferred to PBGC; to attempt to find missing distributees whose benefits are transferred to PBGC and to pay their benefits; and to monitor and audit compliance with applicable requirements.

PBGC believes that the proposed changes in the existing missing participants program will not significantly affect the time for a plan to comply with the collection of information for that program, currently estimated at 2 hours. Although the time needed to comply with the collection of information for the DC program will likely be less, PBGC assumes for simplicity that it will be the same.

As discussed above under Executive Orders 12866 and 13563, PBGC expects few filings by single-employer DB plans not covered by title IV of ERISA or by covered multiemployer plans—so few that they are disregarded for purposes of estimating the burden associated with the proposed amendment of part 4050. But PBGC does expect that many DC plans will elect to use the new missing participants program designed for them—many more than the number of single-employer plans covered by title IV that now make use of part 4050.

PBGC estimates that about 3,100 DC plans per year terminate with missing distributees. Since about 200 DB plans per year use the existing missing participants program, PBGC estimates that about 3,300 plans per year may file under the new programs. This assumes that all eligible DC plans will elect to participate, and thus almost certainly overstates the number of filers.

Accordingly, PBGC estimates the time to file under part 4050 is 6,600 hours. PBGC estimates that 20 percent of the work will be done in-house and 80 percent contracted out. Thus the hour burden for plans is estimated at about 1,320 hours (20 percent of 6,600 hours). The dollar burden of the 5,280 hours contracted out (80 percent of 6,600 hours) is estimated at about $829,000, based on an hourly rate of $157 (5,280 hours at $157 per hour). This estimated cost of $157 per hour is based on the following assumptions:

- Wage rates account for approximately 70 percent of total labor costs, with the remaining 30 percent attributable to benefits costs.[41]
- Consulting is performed by compensation and benefits managers (occupational code 11–3111) at a mean hourly cost of $81.50 (an hourly wage rate of $57.05 plus $24.45 in benefits) and actuaries (occupational code 15–2011) at a mean hourly cost of $75.61 (an hourly wage rate of $52.93 plus $15.88 in benefits).[42] Weighting these two rates equally results in a blended rate for professional consulting services of approximately $78.50.
- The hourly rate is doubled to provide for overhead and other costs, for a total hourly cost of approximately $157.

Thus the burden of the information collection is estimated at 1,320 hours and $829,000.

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension

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[38] See, *e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[39] See, *e.g.*, Code section 430(g)(2)(B), which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[40] See, *e.g.*, DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).

[41] Employer Costs for Employee Compensation news release text, *http://www.bls.gov/news.release/ecec.nr0.htm* (December 9, 2015).

[42] Occupational Employment and Wages, May 2014, 11–3111 Compensation and Benefits Managers *http://www.bls.gov/oes/current/oes113111.htm*, and Occupational Employment and Wages, May 2014, 15–2011 Actuaries, *http://www.bls.gov/oes/current/oes152011.htm*.

Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. Although comments may be submitted through November 21, 2016, the Office of Management and Budget requests that comments be received on or before October 20, 2016 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

List of Subjects

29 CFR Part 4000

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4001

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 4003

Administrative practice and procedure, Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 4041

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 4050

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC proposes to amend 29 CFR parts 4000, 4001, 4003, 4041, 4041A, and 4050 as follows:

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 is revised to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

§ 4000.41 [Amended]

■ 2. In § 4000.41, remove "(premium payments), § 4050.6(d)(3) of this chapter (payment of designated benefits for missing participants), and" and add in its place "(premium payments) and".

PART 4001—TERMINOLOGY

■ 3. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 4. In § 4001.1:
■ a. The existing text is designated as paragraph (a) with the paragraph heading "*In general.*"
■ b. Paragraph (b) is added to read as follows:

§ 4001.1 Purpose and scope.

* * * * *

(b) *Title IV coverage.* Coverage by section 4050 of ERISA is not and does not result in or confer coverage by title IV of ERISA.

§ 4001.2 [Amended]

■ 5. In § 4001.2, the definition of "Distribution date" is amended as follows:
■ a. Paragraph (2) and paragraph (1) introductory text are removed.
■ b. Paragraphs (1)(i) and (ii) are redesignated as paragraphs (1) and (2), respectively.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 6. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 7. In § 4003.1, paragraph (b)(11) is revised to read as follows:

§ 4003.1 Purpose and scope.

* * * * *

(b) * * *

(11) Determinations of the amount of benefit payable by PBGC under section 4050 of ERISA and part 4050 of this chapter.

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PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 8. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 9. In § 4041.28:
■ a. Paragraph (a)(3) is added;
■ b. Paragraph (c)(5) is amended by removing "part 4050" and adding in its place "subpart A of part 4050 of this chapter".

The addition reads as follows:

§ 4041.28 Closeout of plan.

(a) * * *

(3) *Missing participants and beneficiaries.* The distribution deadline is considered met with respect to a missing distributee to whom subpart A of part 4050 of this chapter applies if the benefit transfer amount and plan make-up amount (if any) for the missing distributee are considered timely transferred to PBGC under subpart A of part 4050 of this chapter.

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PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

■ 10. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

■ 11. In § 4041A.42:
■ a. The existing text of § 4041A.42 is designated as paragraph (a) with the paragraph heading "*In general.*".
■ b. Paragraph (b) is added to read as follows:

§ 4041A.42 Method of distribution.

* * * * *

(b) *Missing participants and beneficiaries.* The plan sponsor must distribute plan benefits of missing distributees in accordance with subpart D of part 4050 of this chapter.

■ 12. Part 4050 is revised to read as follows:

PART 4050—MISSING PARTICIPANTS

Subpart A—Single-Employer Plans Covered by Title IV

Sec.
4050.101 Purpose and scope.
4050.102 Definitions.
4050.103 Duties of plan administrator.
4050.104 Diligent search.
4050.105 Filing with PBGC.
4050.106 Missing participant benefits.
4050.107 PBGC discretion.

Subpart B—Defined Contribution Plans

4050.201 Purpose and scope.
4050.202 Definitions.
4050.203 Options and duties of plan.
4050.204 Diligent search.
4050.205 Filing with PBGC.
4050.206 Missing participant benefits.
4050.207 PBGC discretion.

Subpart C—Certain Defined Benefit Plans Not Covered by Title IV

4050.301 Purpose and scope.
4050.302 Definitions.
4050.303 Options and duties of plan administrator.
4050.304 Diligent search.
4050.305 Filing with PBGC.
4050.306 Missing participant benefits.
4050.307 PBGC discretion.

Subpart D—Multiemployer Plans Covered by Title IV

4050.401	Purpose and scope.
4050.402	Definitions.
4050.403	Duties of plan sponsor.
4050.404	Diligent search.
4050.405	Filing with PBGC.
4050.406	Missing participant benefits.
4050.407	PBGC discretion.

Authority: 29 U.S.C. 1302(b)(3), 1350.

Subpart A—Single-Employer Plans Covered by Title IV

§ 4050.101 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for single-employer defined benefit retirement plans covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. This subpart applies only to "subpart A plans" and describes what a subpart A plan must do upon plan termination if it has missing participants or beneficiaries who are entitled to distributions. A subpart A plan is a single-employer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA and

(2) Terminates in a standard termination or in a distress termination described in section 4041(c)(3)(B)(i) or (ii) of ERISA ("sufficient distress termination").

(b) *Plans that terminate but do not close out.* This subpart does not apply to a plan that terminates but does not close out, such as a plan that terminates in a distress termination described in section 4041(c)(3)(B)(iii) of ERISA ("insufficient distress termination").

(c) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

§ 4050.102 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, ERISA, insurer, irrevocable commitment, PBGC, person, and plan administrator. In addition, for purposes of this subpart:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount and plan make-up amount (if any) accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit transfer amount for a missing distributee means the amount determined as follows:

(1) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is not required, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions.

(2) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under PBGC missing participant assumptions.

(3) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions or PBGC missing participant assumptions, whichever gives the higher value.

Benefit transfer date for a missing distributee under a subpart A plan means the date when the subpart A plan pays PBGC the benefit transfer amount and the plan make-up amount (if any) for the missing distributee.

Close-out or *close out* with respect to a subpart A plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart A plan.

Distributee means, with respect to a subpart A plan, a participant or beneficiary entitled to a distribution under the subpart A plan pursuant to the close-out of the subpart A plan.

Missing means, with respect to a distributee under a subpart A plan, that the distributee has not elected a form of distribution upon close-out of the subpart A plan; except that if the present value of the distributee's benefits under the plan, determined as of the benefit transfer date using plan lump sum assumptions, exceeds the amount subject to mandatory cash-out under the terms of the plan pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code, the distributee must be treated as missing only if the plan administrator does not know where the distributee is upon close-out of the subpart A plan.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Pay-status or *pay status* means being or having a benefit that has started before the benefit transfer date. A benefit that becomes payable to a participant at the participant's required beginning date under section 401(a)(9) of the Code before the benefit transfer date but is not in fact paid is not a pay-status benefit.

PBGC missing participant assumptions means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The benefit transfer date is used instead of the termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit transfer date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) Benefit payments for a participant who is in pay status or is past the required beginning date are assumed to begin on the benefit transfer date,

(ii) Benefit payments for a beneficiary are assumed to begin on the benefit transfer date or (if later) the earliest date when the beneficiary could begin to receive benefits, and

(iii) Benefit payments for a participant who is not in pay status and is not past the required beginning date are assumed to begin on the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter.

Plan lump sum assumptions means the actuarial assumptions that would be used under the subpart A plan to calculate the present value of a benefit as of the benefit transfer date for purposes of section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code or, if no such assumptions can be identified, actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit transfer date.

Plan make-up amount means,—

(1) With respect to a missing distributee who is not in pay status and whose required beginning date precedes the benefit transfer date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the benefit transfer date, assuming that the distributee survived to the benefit transfer date; or

(2) With respect to a missing distributee who is in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit transfer date, assuming that the distributee survived to the benefit transfer date.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a person means an individual who survives the person and is entitled under applicable provisions of a QDRO to receive a benefit with respect to the person or, if no such individual is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Required beginning date for a participant means the participant's required beginning date under section 401(a)(9)(C) of the Code.

Subpart A plan means a plan to which this subpart A applies, as described in § 4050.101.

§ 4050.103 Duties of plan administrator.

(a) *Providing for benefits.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must provide for the distributee's plan benefits either—

(1) By purchase of an irrevocable commitment from an insurer, or

(2) By transferring assets to PBGC as described in this subpart A.

(b) *Diligent search.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must have conducted a diligent search as described in § 4050.104. No diligent search is required for a distributee if the plan administrator knows where the distributee is upon close-out of the subpart A plan.

(c) *Filing with PBGC.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must file with PBGC as described in § 4050.105.

§ 4050.104 Diligent search.

(a) *In general.* For each distributee of a subpart A plan who is missing upon close-out, the plan administrator must have used the methods described in this section to locate the distributee.

(b) *Methods to use.* The methods for attempting to find information to locate a missing distributee are as set forth in paragraphs (b)(1) through (5) of this section. If the plan administrator cannot readily identify or obtain access to a source of information described in paragraph (b)(2) or (3) of this section (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information), the plan administrator may resort to such sources of information as may be readily identifiable and accessible.

(1) The plan administrator must search the records of the subpart A plan for information to locate the distributee.

(2) The plan administrator must search the records of the most recent employer that maintained the subpart A plan and employed the distributee, and the records of each retirement or welfare plan of that employer in which the distributee was a participant, for information to locate the distributee.

(3) The plan administrator must request information to locate the distributee from each beneficiary of the distributee identified from the records referred to in paragraphs (b)(1) and (2) of this section.

(4) The plan administrator must search for information to locate the distributee using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a "social media" Web site.

(5) Except as may otherwise be provided in the missing participants forms and instructions, the plan administrator must search for information to locate the distributee using a commercial locator service. For this purpose, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Time frame.* A search for a missing distributee must be made within six months before —

(1) If § 4050.103(a)(i) applies, the last distribution that is not subject to this subpart, or

(2) If § 4050.103(a)(ii) applies, the distributee's benefit transfer date.

§ 4050.105 Filing with PBGC.

(a) *What to file.* For each missing distributee of a subpart A plan, the plan administrator must file with PBGC, in accordance with the missing participants forms and instructions,—

(1) Either—

(i) Information about an irrevocable commitment for the missing distributee, or

(ii) Payment of the benefit transfer amount and the plan make-up amount (if any) for the missing distributee (stating the amount of each) and information about the missing distributee and the missing distributee's benefits and beneficiaries;

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the distribution deadline (including extensions) under § 4041.28(a) of this chapter. Payments under paragraph (a)(1)(ii) of this section will, if considered timely made for purposes of this paragraph (b), be considered timely made for purposes of part 4041 of this chapter.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental filing requirement.* A subpart A plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts and plan make-up amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 4050.106 Missing participant benefits.

(a) *In general*—(1) *Benefit transfer amount not paid.* If a subpart A plan files with PBGC information about an irrevocable commitment provided by the subpart A plan for a missing distributee, PBGC will provide that information to the distributee or another claimant that may be entitled to payment pursuant to the irrevocable commitment.

(2) *Benefit transfer amount paid.* If a subpart A plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (j) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart A plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart A plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either —

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart A plan would have paid the participant, starting at the same date that PBGC payments start (or, if earlier, at the participant's required beginning date), as reported to PBGC by the subpart A plan (including any early retirement subsidies) or through linear interpolation for participants who start payments between exact ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity in paragraph (d)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the required beginning date, the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart A plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either —

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent, as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity under paragraph (d)(1)(i) of this section; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the required beginning date, the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), and (j) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart A plan who dies without receiving a benefit under the missing participants program.

(g) *Unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section, —

(1) *Death before required beginning date.* If the participant dies before the required beginning date, PBGC will pay no benefits with respect to the participant; and

(2) *Death after required beginning date.* If the participant dies on or after the required beginning date, PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the required beginning date to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(h) *Married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (h)(1) of this section and the make-up amounts (if applicable) described in paragraph (h)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (h)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (h)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (under the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart A plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the required beginning date, or

(iii) The required beginning date, if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (h)(2) are the amounts described in paragraphs (h)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (h)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from required beginning date to participant's death.* The make-up amount described in this paragraph (h)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (h)(1) of this section plus the make-up amounts described in paragraph (h)(2) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, then the lump sum that PBGC will pay the spouse under this paragraph (h)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined under the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(i) *Married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (i)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (i)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (i)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from required beginning date to participant's death.* The make-up amount described in this paragraph (i)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(j) *Benefits under contributory plans.* If a subpart A plan reports to PBGC that a portion of a missing participant's benefit transfer amount (and plan make-up amount, if any) represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay to the missing participant, the missing participant's spouse, or the missing participant's qualified survivor(s) at least the amount of accumulated contributions as reported by the subpart A plan, accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes payment.

(k) *Date for determining marital status.* For purposes of this section, whether a person is married, and if so the identity of the spouse, is determined as of the earliest of —

(1) The date the person receives or begins to receive a benefit;

(2) The date the person dies; or

(3) The person's required beginning date.

§ 4050.107 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Subpart B—Defined Contribution Plans

§ 4050.201 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for single-employer and multiemployer defined contribution retirement plans. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. This subpart applies only to "subpart B plans" and describes what a subpart B plan must do upon plan termination if the subpart B plan elects to use the missing participants program for missing participants and beneficiaries of the subpart B plan who are entitled to distributions. A subpart B plan is a plan—

(1) That—

(i) Is a defined contribution (individual account) plan described in section 3(34) of ERISA; or

(ii) Is treated as a defined contribution (individual account) plan under section (3)(35) of ERISA (to the extent so treated);

(2) That—

(i) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA other than paragraph (1), (5), (12), or (13), including a plan described in section 403(b) of the Code under which benefits are provided through custodial accounts described in section 403(b)(7) of the Code;

(3) That, if it is a transferring plan, pays all benefit transfer amounts to PBGC in money, consistent with plan provisions and applicable law; and

(4) That terminates and closes out.

(b) *Defined contribution plans that are part of defined benefit plans.* This subpart does not fail to apply to a plan merely because the plan is described in the same plan document as a defined benefit plan (to which this subpart does not apply). For example, this subpart may apply to employee contributions (or interest or earnings thereon) held as an individual account under a defined benefit plan.

(c) *Defined contribution plans that are abandoned plans.* This subpart does not fail to apply to a plan merely because the plan is an abandoned plan, as defined in 29 CFR 2578.1.

§ 4050.202 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, ERISA, PBGC, and person. In addition, for purposes of this subpart:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit conversion assumptions means, with respect to an annuity, the applicable mortality table and applicable interest rate under section 205(g)(3) of ERISA and section 417(e)(3) of the Code for January of the calendar year in which PBGC begins paying the annuity.

Benefit transfer amount for a missing distributee in a transferring plan means the amount available for distribution to the distributee in connection with the close-out of the subpart B plan, net of administrative expenses (such as a fee paid to PBGC).

Benefit transfer date for a missing distributee under a subpart B plan means the date when the subpart B plan pays PBGC the benefit transfer amount for the missing distributee.

Close-out or *close out* with respect to a subpart B plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart B plan.

Distributee means, with respect to a subpart B plan, a participant or beneficiary entitled to a distribution under the subpart B plan pursuant to the close-out of the subpart B plan, except that a person is not a distributee if the subpart B plan transfers assets to another pension plan (within the meaning of section 3(2) of ERISA) to pay the person's benefits.

Missing means, with respect to a distributee under a subpart B plan, that the distributee has not elected a form of distribution upon close-out of the subpart B plan.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Notifying plan means a subpart B plan that elects notifying plan status in accordance with § 4050.203.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a person means an individual who survives the person and is entitled under applicable provisions of a QDRO, or a person that is identified by the plan in a submission to PBGC by a subpart B plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions), to receive a benefit with respect to the person or, if no such person is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Subpart B plan means a plan to which this subpart B applies, as described in § 4050.201.

Transferring plan means a subpart B plan that elects transferring plan status in accordance with § 4050.203.

§ 4050.203 Options and duties of plan.

(a) *Options.* A subpart B plan that is closing out upon plan termination may (but need not) elect that the subpart B plan —

(1) Will be a "transferring plan," that is, will pay a benefit transfer amount to PBGC for each distributee who is missing upon close-out of the subpart B plan and will be bound by the provisions of this subpart B to the extent that they apply to transferring plans, or

(2) Will be a "notifying plan," that is, will notify PBGC of the disposition of the benefits of one or more distributees identified in the election who are missing upon close-out of the subpart B plan and will, with respect to those distributees, be bound by the provisions of this subpart B to the extent that they apply to notifying plans.

(b) *Elections.* An election under paragraph (a) of this section must be made in accordance with PBGC's missing participants forms and instructions and, in the case of a notifying plan, must identify the missing distributees to which it applies.

(c) *Duties*—(1) *Diligent search*—(i) *Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the subpart B plan must have conducted a diligent search as described in § 4050.204.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart B plan, the subpart B plan must have conducted a diligent search as described in § 4050.204.

(iii) *Exception.* Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, no diligent search is required for a distributee if the subpart B plan knows where the distributee is upon close-out of the subpart B plan.

(2) *Filing with PBGC*—(i) *Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the subpart B plan must file with PBGC as described in § 4050.205.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart B plan, the subpart B plan must file with PBGC as described in § 4050.205.

(d) *Compliance; audits.* PBGC may audit relevant plan and plan sponsor records if there is reasonable cause to suspect substantial non-compliance and may refer its findings to the appropriate regulator.

§ 4050.204 Diligent search.

(a) *In general.* For each distributee of a subpart B plan who is described in § 4050.203(c)(1), the subpart B plan must have searched for the distributee in accordance with regulations and other applicable guidance issued by the Secretary of Labor under section 404 of ERISA.

(b) *Time frame.* A search for a missing distributee must be made within six months before—

(1) In the case of a transferring plan, the distributee's benefit transfer date, or

(2) In the case of a notifying plan, the last distribution that is not subject to this subpart.

§ 4050.205 Filing with PBGC.

(a) *What to file.* For each distributee of a subpart B plan who is described in § 4050.203(c)(1), the subpart B plan must file with PBGC, in accordance with the missing participants forms and instructions, information about the missing distributee and the missing distributee's benefits and beneficiaries and—

(1) Either—

(i) If the subpart B plan is a notifying plan, information about the entity to which the subpart B plan transferred the missing distributee's benefits, or

(ii) If the subpart B plan is a transferring plan, payment of the benefit transfer amount for the missing distributee;

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the last distribution that is not subject to this subpart.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental filing requirement.* A subpart B plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 4050.206 Missing participant benefits.

(a) *In general*—(1) *Benefit transfer amount not paid.* If a notifying plan files with PBGC information about a disposition of benefits made by the subpart B plan for a missing distributee, PBGC will provide that information to the distributee or another claimant that may be entitled to the benefits.

(2) *Benefit transfer amount paid.* If a transferring plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), and (e) of this section describe the benefits that PBGC will pay to a missing participant of a subpart B plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55; or, if the participant so elects, the lump sum described in paragraph (d)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is, at the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (d)(2) is the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55; or, if the participant so elects with the consent of the participant's spouse, the lump sum described in paragraph (e)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either —

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (e)(2) is the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), and (i) of this section describe the benefits that PBGC will pay with respect to a missing participant of a subpart B plan who dies without receiving a benefit under the missing participants program.

(g) *Participant with de minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, and the participant's qualified survivor claims a benefit under the missing participants program, PBGC will pay the claimant a lump sum equal to the participant's accumulated single sum.

(h) *Unmarried participant with non-de minimis benefit.* If the benefit transfer amount of an unmarried participant described in paragraph (f) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, and the participant's qualified survivor claims a benefit under the missing participants program, PBGC will pay the claimant a lump sum equal to the participant's accumulated single sum.

(i) *Married participant with non-de minimis benefit.* If the benefit transfer amount of a married participant described in paragraph (f) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, and the participant's spouse survives the participant and claims a benefit under the missing participants program, PBGC will, at the spouse's election, either pay the spouse, beginning not before the participant would have reached age 55, the annuity described in paragraph (i)(1) of this section; or pay the spouse the lump sum described in paragraph (i)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is a straight life annuity for the life of the spouse in an amount that is actuarially equivalent, under the benefit conversion

assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (i)(2) is a lump sum equal to the participant's accumulated single sum.

(j) *Date for determining marital status.* For purposes of this section, whether a person is married, and if so the identity of the spouse, is determined as of the earliest of—

(1) The date the person receives or begins to receive a benefit,

(2) The date the person dies, or

(3) The person's required beginning date.

§ 4050.207 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Subpart C—Certain Defined Benefit Plans Not Covered by Title IV

§ 4050.301 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for small professional service defined benefit retirement plans not covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. This subpart applies only to "subpart C plans" and describes what a subpart C plan must do upon plan termination if the plan administrator elects to use the missing participants program for missing participants or beneficiaries of the subpart C plan who are entitled to distributions. A subpart C plan is a single-employer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA other than paragraph (13), and

(2) Terminates and closes out with sufficient assets to satisfy all liabilities with respect to employees and their beneficiaries.

(b) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

§ 4050.302 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, PBGC, person, and plan administrator. In addition, for purposes of this subpart:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount and plan make-up amount (if any) accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit transfer amount for a missing distributee in a transferring plan means the amount determined as follows:

(1) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is not required, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions.

(2) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under PBGC missing participant assumptions.

(3) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions or PBGC missing participant assumptions, whichever gives the higher value.

Benefit transfer date for a missing distributee under a subpart C plan means the date when the subpart C plan pays PBGC the benefit transfer amount and the plan make-up amount (if any) for the missing distributee.

Close-out or *close out* with respect to a subpart C plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart C plan.

Distributee means, with respect to a subpart C plan, a participant or beneficiary entitled to a distribution under the subpart C plan pursuant to the close-out of the subpart C plan, except that a person is not a distributee if the subpart C plan transfers assets to another pension plan (within the meaning of section 3(2) of ERISA) to pay the person's benefits.

Missing means, with respect to a distributee under a subpart C plan, that the distributee has not elected a form of distribution upon close-out of the subpart C plan; except that if the present value of the distributee's benefits under the plan, determined as of the benefit transfer date using plan lump sum assumptions, exceeds the amount subject to mandatory cash-out under the terms of the plan pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code, the distributee must be treated as missing only if the plan administrator does not know where the distributee is upon close-out of the subpart C plan.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Notifying plan means a subpart C plan for which the plan administrator elects notifying plan status in accordance with § 4050.303.

Pay-status or *pay status* means being or having a benefit that has started before the benefit transfer date. A benefit that becomes payable to a participant at the participant's required beginning date under section 401(a)(9) of the Code before the benefit transfer date but is not in fact paid is not a pay-status benefit.

PBGC missing participant assumptions means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The benefit transfer date is used instead of the termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations

occurring in January of the calendar year in which the benefit transfer date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) Benefit payments for a participant who is in pay status or is past the required beginning date are assumed to begin on the benefit transfer date,

(ii) Benefit payments for a beneficiary are assumed to begin on the benefit transfer date or (if later) the earliest date when the beneficiary could begin to receive benefits, and

(iii) Benefit payments for a participant who is not in pay status and is not past the required beginning date are assumed to begin on the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter.

Plan lump sum assumptions means the actuarial assumptions that would be used under the subpart C plan to calculate the present value of a benefit as of the benefit transfer date for purposes of section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code or, if no such assumptions can be identified, actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit transfer date.

Plan make-up amount means,—

(1) With respect to a missing distributee who is not in pay status and whose required beginning date precedes the benefit transfer date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the benefit transfer date, assuming that the distributee survived to the benefit transfer date; or

(2) With respect to a missing distributee who is in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit transfer date, assuming that the distributee survived to the benefit transfer date.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a person means an individual who survives the person and is entitled under applicable provisions of a QDRO to receive a benefit with respect to the person or, if no such individual is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Required beginning date for a participant means the participant's required beginning date under section 401(a)(9)(C) of the Code.

Subpart C plan means a plan to which this subpart C applies, as described in § 4050.201.

Transferring plan means a subpart C plan for which the plan administrator elects transferring plan status in accordance with § 4050.303.

§ 4050.303 Options and duties of plan administrator.

(a) *Options.* The plan administrator of a subpart C plan that is closing out upon plan termination may (but need not) elect that the subpart C plan —

(1) Will be a "transferring plan," that is, will pay a benefit transfer amount to PBGC for each distributee who is missing upon close-out of the subpart C plan and will be bound by the provisions of this subpart C to the extent that they apply to transferring plans, or

(2) Will be a "notifying plan," that is, will notify PBGC of the disposition of the benefits of one or more distributees identified in the election who are missing upon close-out of the subpart C plan and will, with respect to those distributees, be bound by the provisions of this subpart C to the extent that they apply to notifying plans.

(b) *Elections.* An election under paragraph (a) of this section must be made in accordance with PBGC's missing participants forms and instructions and, in the case of a notifying plan, must identify the missing distributees to which it applies.

(c) *Duties*—(1) *Diligent search*—(i) *Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the plan administrator must have conducted a diligent search as described in § 4050.304.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart C plan, the plan administrator must have conducted a diligent search as described in § 4050.304.

(iii) *Exception.* Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, no diligent search is required for a distributee if the plan administrator knows where the distributee is upon close-out of the subpart C plan.

(2) *Filing with PBGC*—(i) *Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the plan administrator must file with PBGC as described in § 4050.305.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart C plan, the plan administrator must file with PBGC as described in § 4050.305.

(d) *Compliance; audits.* PBGC may audit relevant plan and plan sponsor records if there is reasonable cause to suspect substantial non-compliance and may refer its findings to the appropriate regulator.

§ 4050.304 Diligent search.

(a) *In general.* For each distributee of a subpart C plan who is described in § 4050.303(c)(1), the plan administrator must have used the methods described in this section to locate the distributee.

(b) *Methods to use.* The methods for attempting to find information to locate a missing distributee are as set forth in paragraphs (b)(1) through (5) of this section. If the plan administrator cannot readily identify or obtain access to a source of information described in paragraph (b)(2) or (3) of this section (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information), the plan administrator may resort to such sources of information as may be readily identifiable and accessible.

(1) The plan administrator must search the records of the subpart C plan for information to locate the distributee.

(2) The plan administrator must search the records of the most recent employer that maintained the subpart C plan and employed the distributee, and the records of each retirement or welfare plan of that employer in which the distributee was a participant, for information to locate the distributee.

(3) The plan administrator must request information to locate the distributee from each beneficiary of the distributee identified from the records referred to in paragraphs (b)(1) and (2) of this section.

(4) The plan administrator must search for information to locate the distributee using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real

estate taxes) or a "social media" Web site.

(5) Except as may otherwise be provided in the missing participants forms and instructions, the plan administrator must search for information to locate the distributee using a commercial locator service. For this purpose, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Time frame.* A search for a missing distributee must be made within six months before—

(1) In the case of a transferring plan, the distributee's benefit transfer date, or

(2) In the case of a notifying plan, the last distribution that is not subject to this subpart.

§ 4050.305 Filing with PBGC.

(a) *What to file.* For each distributee of a subpart C plan who is described in § 4050.303(c)(1), the plan administrator must file with PBGC, in accordance with the missing participants forms and instructions, information about the missing distributee and the missing distributee's benefits and beneficiaries and—

(1) Either—

(i) If the subpart C plan is a notifying plan, information about the entity to which the subpart C plan transferred the missing distributee's benefits, or

(ii) If the subpart C plan is a transferring plan, payment of the benefit transfer amount and the plan make-up amount (if any) for the missing distributee (stating the amount of each);

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the last distribution that is not subject to this subpart.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental filing requirement.* A subpart C plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts and plan make-up amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 4050.306 Missing participant benefits.

(a) *In general*—(1) *Benefit transfer amount not paid.* If a notifying plan files with PBGC information about a disposition of benefits made by the subpart C plan for a missing distributee, PBGC will provide that information to the distributee or another claimant that may be entitled to the benefits.

(2) *Benefit transfer amount paid.* If a transferring plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (j) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart C plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart C plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart C plan would have paid the participant, starting at the same date that PBGC payments start (or, if earlier, at the participant's required beginning date), as reported to PBGC by the subpart C plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between exact ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity in paragraph (d)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the required beginning date, the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart C plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent, as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity under paragraph (d)(1)(i) of this section; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the required beginning date, the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), and (j) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart C plan who dies without receiving a benefit under the missing participants program.

(g) *Unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section,—

(1) *Death before required beginning date.* If the participant dies before the required beginning date, PBGC will pay no benefits with respect to the participant; and

(2) *Death after required beginning date.* If the participant dies on or after the required beginning date, PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) that would have been payable to the participant from the required beginning date to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(h) *Married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (h)(1) of this section and the make-up amounts (if applicable) described in paragraph (h)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (h)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (h)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (under the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart C plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the required beginning date, or

(iii) The required beginning date, if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (h)(2) are the amounts described in paragraphs (h)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (h)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from required beginning date to participant's death.* The make-up amount described in this paragraph (h)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (h)(1) of this section plus the make-up amounts described in paragraph (h)(2) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, then the lump sum that PBGC will pay the spouse under this paragraph (h)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined under the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(i) *Married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (i)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (i)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (i)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from required beginning date to participant's death.* The make-up amount described in this paragraph (i)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(j) *Benefits under contributory plans.* If a subpart C plan reports to PBGC that a portion of a missing participant's benefit transfer amount (and plan make-up amount, if any) represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay to the missing participant, the missing participant's spouse, or the missing participant's qualified survivor(s) at least the amount of accumulated contributions as reported by the subpart C plan, accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes payment.

(k) *Date for determining marital status.* For purposes of this section, whether a person is married, and if so the identity of the spouse, is determined as of the earliest of—

(1) The date the person receives or begins to receive a benefit;

(2) The date the person dies; or

(3) The person's required beginning date.

§ 4050.307 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Subpart D—Multiemployer Plans Covered by Title IV

§ 4050.401 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for multiemployer defined benefit retirement plans covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in retirement plans that are closing out and to help them find and receive the benefits being held for them. This subpart applies only to "subpart D plans" and describes what a subpart D plan that is closing out must do if it has missing participants or beneficiaries who are entitled to distributions. A subpart D plan is a multiemployer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA, and

(2) Completes the process of closing out under subpart D of PBGC's regulation on Termination of Multiemployer Plans (29 CFR part 4041A).

(b) *Plans that terminate but do not close out.* This subpart does not apply to plans that terminate but do not close out.

(c) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

§ 4050.402 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, insurer, PBGC, person, and plan sponsor. In addition, for purposes of this subpart:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount and plan make-up amount (if any) accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit transfer amount for a missing distributee means the amount determined as follows:

(1) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is not required, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions.

(2) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under PBGC missing participant assumptions.

(3) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions or PBGC missing participant assumptions, whichever gives the higher value.

Benefit transfer date for a missing distributee under a subpart D plan means the date when the subpart D plan pays PBGC the benefit transfer amount and the plan make-up amount (if any) for the missing distributee.

Close-out or *close out* with respect to a subpart D plan means the process of the final distribution or transfer of assets in satisfaction of plan benefits.

Distributee means, with respect to a subpart D plan, a participant or beneficiary entitled to a distribution under the subpart D plan pursuant to the close-out of the subpart D plan.

Missing means, with respect to a distributee under a subpart D plan, that the distributee has not elected a form of distribution upon close-out of the subpart D plan; except that if the present value of the distributee's benefits under the plan, determined as of the benefit transfer date using plan lump sum assumptions, exceeds the amount subject to mandatory cash-out under the terms of the plan pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code, the distributee must be treated as missing only if the plan administrator does not know where the distributee is upon close-out of the subpart D plan.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Pay-status or *pay status* means being or having a benefit that has started before the benefit transfer date. A benefit that becomes payable to a participant at the participant's required beginning date under section 401(a)(9) of the Code before the benefit transfer date but is not in fact paid is not a pay-status benefit.

PBGC missing participant assumptions means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The benefit transfer date is used instead of the termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit transfer date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) Benefit payments for a participant who is in pay status or is past the required beginning date are assumed to begin on the benefit transfer date,

(ii) Benefit payments for a beneficiary are assumed to begin on the benefit transfer date or (if later) the earliest date when the beneficiary could begin to receive benefits, and

(iii) Benefit payments for a participant who is not in pay status and is not past the required beginning date are assumed to begin on the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter.

Plan lump sum assumptions means the actuarial assumptions that would be used under the subpart D plan to calculate the present value of a benefit as of the benefit transfer date for purposes of section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code or, if no such assumptions can be identified, actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit transfer date.

Plan make-up amount means,—

(1) With respect to a missing distributee who is not in pay status and whose required beginning date precedes the benefit transfer date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the benefit transfer date, assuming that the distributee survived to the benefit transfer date; or

(2) With respect to a missing distributee who is in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit transfer date, assuming that the distributee survived to the benefit transfer date.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a person means an individual who survives the person and is entitled under applicable provisions of a QDRO to receive a benefit with respect to the person or, if no such individual is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Required beginning date for a participant means the participant's required beginning date under section 401(a)(9)(C) of the Code.

Subpart D plan means a plan to which this subpart D applies, as described in § 4050.401.

§ 4050.403 Duties of plan sponsor.

(a) *Providing for benefits.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must provide for the distributee's plan benefits either—

(i) By purchase of an annuity contract from an insurer; or

(ii) By transferring assets to PBGC as described in this subpart D.

(b) *Diligent search.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must have conducted a diligent tsearch as described in § 4050.404. No diligent search is required for a distributee if the plan sponsor knows where the distributee is upon close-out of the subpart D plan.

(c) *Filing with PBGC.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must file with PBGC as described in § 4050.405.

§ 4050.404 Diligent search.

(a) *In general.* For each distributee of a subpart D plan who is missing upon close-out, the plan sponsor must have used the methods described in this section to locate the distributee.

(b) *Methods to use.* The methods for attempting to find information to locate a missing distributee are as set forth in paragraphs (b)(1) through (5) of this section. If the plan sponsor cannot readily identify or obtain access to a source of information described in paragraph (b)(2) or (3) of this section (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information), the plan sponsor may resort to such sources of information as may be readily identifiable and accessible.

(1) The plan sponsor must search the records of the subpart D plan for information to locate the distributee.

(2) The plan sponsor must search the records of the most recent employer that maintained the subpart D plan and employed the distributee, and the records of each retirement or welfare plan of that employer in which the distributee was a participant, for information to locate the distributee.

(3) The plan sponsor must request information to locate the distributee from each beneficiary of the distributee identified from the records referred to in paragraphs (b)(1) and (2) of this section.

(4) The plan sponsor must search for information to locate the distributee using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a "social media" Web site.

(5) Except as may otherwise be provided in the missing participants forms and instructions, the plan sponsor must search for information to locate the distributee using a commercial locator service. For this purpose, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Time frame.* A search for a missing distributee must be made within six months before—

(1) If § 4050.403(a)(i) applies, the last distribution that is not subject to this subpart; or

(2) If § 4050.403(a)(ii) applies, the distributee's benefit transfer date.

§ 4050.405 Filing with PBGC.

(a) *What to file.* For each missing distributee of a subpart D plan, the plan sponsor must file with PBGC, in accordance with the missing participants forms and instructions,—

(1) Either—

(i) Information about an annuity contract for the missing distributee, or

(ii) Payment of the benefit transfer amount and the plan make-up amount (if any) for the missing distributee (stating the amount of each) and information about the missing distributee and the missing distributee's benefits and beneficiaries;

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the last distribution that is not subject to this subpart. Payments under paragraph (a)(1)(ii) of this section will, if considered timely made for purposes of this paragraph (b), be considered timely made for purposes of part 4041A of this chapter.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental filing requirement.* A subpart D plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts and plan make-up amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 4050.406 Missing participant benefits.

(a) *In general*—(1) *Benefit transfer amount not paid.* If a subpart D plan files with PBGC information about an annuity contract purchased by the subpart D plan from an insurer for a missing distributee, PBGC will provide that information to the distributee or another claimant that may be entitled to payment pursuant to the contract.

(2) *Benefit transfer amount paid.* If a subpart D plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (j) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart D plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart D plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart D plan would have paid the participant, starting at the same date that PBGC payments start (or, if earlier, at the participant's required beginning date), as reported to PBGC by the subpart D plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between exact ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity in paragraph (d)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the required beginning date, the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart D plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity under paragraph (d)(1)(i) of this section; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent, as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the required beginning date, the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), and (j) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart D plan who dies without receiving a benefit under the missing participants program.

(g) *Unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section,—

(1) *Death before required beginning date.* If the participant dies before the required beginning date, PBGC will pay no benefits with respect to the participant; and

(2) *Death after required beginning date.* If the participant dies on or after the required beginning date, PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the

straight life annuity described in paragraph (d)(1)(i) that would have been payable to the participant from the required beginning date to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(h) *Married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (h)(1) of this section and the make-up amounts (if applicable) described in paragraph (h)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (h)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (h)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (under the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart D plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the required beginning date, or

(iii) The required beginning date, if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (h)(2) are the amounts described in paragraphs (h)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (h)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from required beginning date to participant's death.* The make-up amount described in this paragraph (h)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (h)(1) of this section plus the make-up amounts described in paragraph (h)(2) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, then the lump sum that PBGC will pay the spouse under this paragraph (h)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined under the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(i) *Married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (i)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (i)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (i)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from required beginning date to participant's death.* The make-up amount described in this paragraph (i)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(j) *Benefits under contributory plans.* If a subpart D plan reports to PBGC that a portion of a missing participant's benefit transfer amount (and plan make-up amount, if any) represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay to the missing participant, the missing participant's spouse, or the missing participant's qualified survivor(s) at least the amount of accumulated contributions as reported by the subpart D plan, accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes payment.

(k) *Date for determining marital status.* For purposes of this section, whether a person is married, and if so the identity of the spouse, is determined as of the earliest of —

(1) The date the person receives or begins to receive a benefit;

(2) The date the person dies; or

(3) The person's required beginning date.

§ 4050.407 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Issued in Washington DC by

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

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Part VI

Department of Education

34 CFR Part 222
Impact Aid Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AB24

[Docket ID ED–2015–OESE–0109]

Impact Aid Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Impact Aid Program (IAP) regulations issued under title VII of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA or the Act). These regulations govern Impact Aid payments to local educational agencies (LEAs). The program, in general, provides assistance for maintenance and operations costs to LEAs that are affected by Federal activities. These regulations update, clarify, and improve the current regulations.

DATES: These regulations are effective January 31, 2017. For more information, see SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Kristen Walls, U.S. Department of Education, 400 Maryland Avenue SW., room 3C103 LBJ, Washington, DC 20202. Telephone: (202) 260–3858 or by email: *Kristen.walls@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: January 31, 2017 is the due date for Impact Aid applications for fiscal year (FY) 2018, and these regulations will apply to our review of those and subsequent fiscal year applications. We will allow for early implementation of these regulations. For example, if before January 31, 2017, an applicant submits an application and can establish eligibility under these regulations (but not the prior regulations), we would consider the request as one for early implementation of these regulations and deem the applicant eligible.

Additionally, affected parties do not have to comply with the new information collection requirements in 34 CFR part 222 until the Department of Education (Department) publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

In the preamble of the NPRM, we discussed (pages 81481 through 81487) the major changes proposed in that document to improve, clarify, and update the regulations governing the IAP.

Under the ESEA, prior to amendment by the Every Student Succeeds Act (ESSA) (Pub. L. 114–95), the IAP statutory provisions were contained in title VIII. Payments for Federal Property were under section 8002 of the Act and Payments for Federally Connected Children were under section 8003 of the Act. Under the ESEA, as amended by ESSA, all IAP statutory provisions are now in title VII and references in this document are to the new statutory citations, *i.e.*, section 7002 for Payments for Federal Property, and section 7003 for Payments for Federally Connected Children. While comments received from the public may refer to either "section 8003" or "section 7003," these regulations reference the current statutory sections.

The Department recognizes that there are changes to the statute under ESSA that may require additional regulatory action. However, the amendments in this regulatory action are related exclusively to the proposed changes in the NPRM that was published on December 30, 2015, in the **Federal Register** (80 FR 81477), which do not relate to the ESSA revisions. Any regulatory changes resulting from the passage of ESSA would be proposed in a separate NPRM.

Tribal Consultation: On December 30, 2015, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (80 FR 81477). The NPRM followed a process of consultation under Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments") that began with a request for tribal input that we announced via the Office of Indian Education's listserv on July 2, 2015, and July 14, 2015, and continued with two nationally accessible tribal consultation teleconferences on July 15, 2015, and July 28, 2015. In the NPRM, we discussed this process in detail (80 FR 81477).

Public Comment: In response to our invitation to comment in the NPRM, 66 parties submitted comments. Twenty five comments encouraged consultation with teachers during the implementation of ESSA and two comments addressed appropriation levels for the Impact Aid Programs. We do not discuss these comments as they are not related to the regulations proposed in the NPRM. Thirty nine comments related directly to the proposed regulations. We discuss the substantive issues under the section numbers to which the comments pertain. Several comments did not pertain to a specific section of the proposed regulations. We discuss these comments based on the general topic area. In addition, the Department solicited comments on three topics, as follows:

- What are some alternative methods for counting federally connected children besides the parent-pupil survey form or source check collection tools?
- As these regulations would require source checks for children residing on Indian lands and eligible low rent housing, what types of technical assistance would you like the Department to provide to properly educate and inform LEAs on the source check process?
- As the Department is beginning to look at alternative sources for data collection, can you propose ways in which online data collection might be used to facilitate the data collection process? This may include but is not limited to the online collection of parent-pupil survey forms and the use of student information systems for data collection.

The comments received related to these questions will be discussed in the related general topic area in the following section. Generally, we do not address comments unrelated to the IAP, and we do not discuss technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and any changes from the regulations as proposed in the NPRM follows.

Methods of Data Collection

Comments: Many commenters supported the addition of an electronic method to the approved systems of application data collection in § 222.35, specifically one that would leverage existing student information systems (SISs). In general, the commenters felt that the use of paper data collection is antiquated and costly as LEAs must support two different reporting systems for data collection and warehousing. One commenter stated that the use of an electronic student count would significantly reduce the burden of the Impact Aid application process, would be more cost-effective, reduce staff time for LEAs that choose to use this method, and would potentially improve the accuracy of the count. The commenter also stated that an electronic count would make the audit process and general oversight of the program less burdensome for Department staff.

Two commenters requested increased flexibility around the requirement that source check and parent-pupil survey forms be signed on or after the LEA's chosen survey date, to allow LEAs to use electronic information collected during the school registration process. One commenter proposed allowing forms that have been signed within 60 days of the survey date. Another commenter proposed using registration data in lieu of the parent-pupil survey form.

A few commenters suggested that electronic methods be explicitly identified as allowable in the regulations. One commenter requested that electronic signatures be added as a valid form of certification and one commenter requested that references to written records be removed from the regulations.

Multiple commenters suggested the Department find ways to use the new military student identifier, required by title I of the ESEA, as amended by the ESSA, to streamline data collection for Impact Aid.

One commenter suggested that the source check document be revised to add a column to document the number of children who reside on Federal property or whose parents work on Federal property. The commenter stated that this might require collaboration with certifying officials; however, it would be helpful to the LEAs counting federally connected children.

Discussion: We support methods of electronic data collection that decrease burden for school districts while still providing required evidence of the connection between students and Federal properties on a specific survey date. To that end, we are investigating various SISs and their capabilities as they relate to the IAP requirements for data collection. To provide more flexibility on data collection methods, including electronic systems or hybrids of parent-pupil surveys and source checks, we are adding a paragraph to § 222.35 that allows an LEA to use an alternate method of data collection with the Secretary's approval. Thus, an LEA's SIS could be one such method, if an LEA can demonstrate that its SIS is capable of collecting and generating data in a manner that provides all of the information needed by IAP to verify student eligibility.

The membership count, both total membership and federally connected membership, is a snapshot of the LEA's student composition on a particular date. It allows analysis of correlated data at a particular point in time. To ensure accuracy of student count numbers submitted on an application, an LEA must verify annually the parent's military duty status or employment location and student's residence location to confirm the student's federally-connected eligibility. Under the current regulations, unchanged by these final regulations, the LEA may select as a survey date any day between the fourth day of the school year and January 30 (§ 222.34(a)(2)). Although registration data may provide a baseline to identify children the LEA believes to be federally connected, information obtained during registration, including a student's residence or a parent's place of employment, can change at any time and may be outdated by the survey date. For example, an LEA must have a mechanism, electronic or otherwise, for parents and/or certifying officials to update the information or confirm that there have been no changes since registration, to ensure that the district is only claiming eligible students whom the district is actually educating as of a specific date during the school year, and to ensure that those students meet all eligibility requirements as of that date. The current regulations did not specify that the parent must sign a parent-pupil survey form on or after the survey date; as a result, these final regulations clarify this requirement. With the addition of a third option for data collection, a district, for example, may be able to have a housing, Indian lands official, or military official verify data, which could eliminate the burden of having parents re-confirm data or sign a parent-pupil survey form.

With regard to electronic signatures, there is nothing in the current regulations that prevents an LEA from using an electronically signed parent-pupil survey form or source check form. The Department's interpretation of the word "written" does not preclude the use of electronic records.

As the Department works with States and LEAs to implement the new military identifier required by the ESEA, as amended by the ESSA, it may become appropriate to use the identifier in lieu of, or as a component of, the count of eligible children under the IAP. The Department may issue guidance to LEAs on this issue in the future.

With regard to the suggestion for revising the source check document, there is no required source check form that districts must use. Rather, the Department provides sample source check templates for the convenience of the LEA. The LEA may add information to enhance the value of the document as long as the information needed to verify the child's residence location or the parents' place of employment is included.

Changes: Section 222.35 is revised by adding a new paragraph (c) that allows an LEA to use an alternate method of data collection with the Department's approval. In addition, in paragraph (a)(4), language is added to clarify that the parent's signature on a survey form must be dated on or after the LEA's survey date.

Technical Assistance

Comments: Several commenters suggested making available recorded Webinars and an annual handbook to educate LEAs on the required methods of data collection.

One commenter appreciated efforts to keep LEAs informed through the use of listservs and Webinars. The commenter recommended, however, that changes to the application or the accompanying forms should be posted to the Department's Web site and sent to each LEA. The commenter recommended that the Department also distribute the documents to LEAs because Webinar participation is limited and many LEAs cannot participate.

The commenter also recommended that an automatic verification system for application submissions, including for signature and assurance pages, be implemented. The commenter also requested that the application system not be shut down during the application period. Finally, the commenter requested additional clarification about who may sign a source check document.

Discussion: We appreciate the suggestions to improve technical assistance to grantees. The Department continues to review ways to increase and improve communication. With regard to the request for additional technical assistance for source check documents, we will work to improve our technical assistance and outreach on all aspects of the Impact Aid Program including this and related regulatory matters.

Changes: None.

Definitions—Membership (§ 222.2)

Comment: One organization expressed support for the clarification of the definition of membership, in particular, that a student must reside in the State in which the LEA is located except when there is a formal agreement between States.

Discussion: On occasion, certain LEAs have reported in membership children who reside in another State. Children who reside in one State and attend school in a different State are generally excluded from Impact Aid. Under the current regulations, eligible students must be supported by State aid. States typically do not provide State education aid for children who reside in other States. The amended regulation clarifies the rule and provides two exceptions to it: one is statutory (section 8010(c)) and the other is for children who are covered under a formal tuition or enrollment agreement between two States.

Changes: None.

Definitions—Parent Employed on Federal Property (§ 222.2)

Comment: Two organizations supported updating § 222.2 to include the circumstance of telework. One commenter stated that the updated regulation makes sense, given how technology has changed the way people work. One commenter discussed telework in relation to distance learning, using the example of a school district on eligible Indian lands that hires a teacher who may sometimes work on the eligible property, from home, or on a non-tribal or non-Federal property.

Discussion: As telework is becoming more common among Federal workers, it is necessary to recognize this change. With respect to non-Federal employees who telework, the LEA should use the definition of "Parent employed on Federal property," in paragraphs (1)(ii), and (2) of § 222.2(c). The amended definition of "Parent employed on Federal property" in paragraph (1)(i) addresses telework only for Federal employees, and provides that the eligibility of the child depends on the location of the parent's regular duty station, and not physical working location, on the survey date.

Changes: None.

Comment: Numerous commenters expressed concerns over the proposed changes to the exception in the definition of a "parent who is employed on Federal property," specifically a parent who is not employed by the Federal government and reports to work at a location not on Federal property. Several commenters asked the Department to reword the regulation to improve the clarity of the provision.

One commenter stated that the proposed regulation would exclude parents whose job is providing services on Federal property, but who are not Federal employees and whose duty station is not on Federal property. The commenter urged the Department to refrain from excluding these parents.

Discussion: The change in this definition is intended to clarify, but not change the definition of a parent employed on Federal property. Under this definition, as the current regulation has been implemented and under this clarification, simply performing a service on a Federal property does not demonstrate that a person is employed on Federal property. This definition will not be applied differently than it has in the past.

In response to the commenter who stated the regulation would exclude parents whose job is providing services on Federal property, but who are not Federal employees and whose duty station is not on Federal property, the Department clarifies that such parents are currently excluded from the definition of a "parent employed on Federal property." These individuals would continue to be excluded from that definition under the amended regulation.

The Department acknowledges the complexity of the regulation and the concerns of the commenters. To better illustrate the rule, the Department added examples of eligibility and ineligibility under the regulation, depending on the parent's employment situation.

Changes: We have added examples of when parents meet the definition of a "parent employed on Federal property," and when they do not.

Amendment Deadline (§§ 222.3(b)(2) and 222.5(a)(2) and (b)(2))

Comments: Many comments were submitted regarding the change in the amendment deadline from September 30 to June 30 in both § 222.3 and § 222.5. Most comments recognized that the shortened amendment period would facilitate prompt payments, and supported the change. Two commenters were concerned that some LEAs that amend their applications in September may have difficulty with the change. One commenter suggested that the Department increase communications about this change clearly and regularly so that LEAs that have typically amended their applications in September can properly prepare for the change. One commenter opposed shortening the deadline as it would pose a problem for LEAs with large memberships. The commenter stated that because the shortened timeframe and the amendment date fall at the end of most LEAs' fiscal year, the change poses significant problems for LEAs with large memberships.

Discussion: Each year many LEAs submit applications in January showing incomplete counts of eligible children and provide complete and accurate information through amendments submitted as late as September 30. This practice impedes the Department's ability to review the applications and prepare initial payments in a timely fashion. The Department is expected to make Impact Aid payments generally no later than two years after funds are appropriated (ESEA section 7010(d), codifying a provision previously in the National Defense Authorization Act (NDAA) of 2013)). A June 30th amendment deadline will ensure that the Department receives complete application information that can be reviewed in a timelier manner. LEAs with large membership may need to revise their business processes to accommodate the change. The Department appreciates that many commenters support this change and the Department will take measures to provide technical assistance and inform LEAs of changes included in this final rule.

Changes: None.

Second Membership Count § 222.5(b)(1)

Comment: Numerous commenters opposed the proposal to remove the second membership count provisions in current § 222.34.

Discussion: The Department appreciates the comments advocating against the proposed change, and retains the second membership count provisions in current § 222.34. The proposed regulation that would have updated § 222.5(b)(1) to be consistent with this proposed change is no longer necessary. A more complete discussion related to the second membership count can be found in the subsequent discussion of § 222.34.

Changes: The proposed revisions in §§ 222.33, 222.34 and § 222.5(b)(1) to remove the second membership count provisions in the current regulations are not included in these final regulations.

Section 7002 (§§ 222.22–222.24)

Comments: Several commenters opposed the inclusion of all payments in lieu of taxes (PILTs) in the calculation of other Federal revenue, as described in § 222.22. The commenters stated that including PILTs in the payment calculation would cause some current grantees to become ineligible for funding. One commenter argued that the current payment formula may artificially depress an LEA's maximum payment, so that an LEA with PILTs included as other Federal revenue would be considered substantially compensated. One commenter noted that payments for PILTs can be inconsistent, and including them in the payment calculation could cause budgetary turmoil for grantees.

Discussion: Comments related to PILTs informed the Department's further research into the issues of PILTs and how they are categorized and disbursed. PILTs that are made by the Department of Interior (DOI) under the authority of Chapter 69 of Title 31 of the U.S. Code are made based only on the presence of tax-exempt Federal property regardless of whether activities are taking place on the Federal property. See "PILT (Payments in Lieu of Taxes): Somewhat Simplified," Congressional Research Service (2015), available at *www.fas.org/sgp/crs/misc/RL31392.pdf*. In fact, in calculating the amount of PILT payments, the DOI subtracts payments from Federal activities, including payments from the Forest Service under the Bankhead-Jones Farm Tenant Act, the Secure Rural Schools and Community Self-Determination Act, and others; payments from Bureau of Land Management (BLM) under the Taylor Grazing Act, Mineral Lands Leasing Act, and others; payments from the Fish and Wildlife Service, and payments from the Federal Energy Regulatory Commission. While those payments from other Federal agencies are due to activities on the Federal property, the DOI PILTs are not. Section 7002 of the Act specifically requires revenues deriving from activities on Federal property to be taken into account, but not other revenues. This further analysis of PILTs indicates that PILTs from DOI should not be considered as revenue generated from activities on the Federal property, and, we have revised the regulation to clarify this. Such DOI PILTs will not affect an LEA's eligibility for section 7002 Impact Aid payments, or the maximum amount of such payments. This interpretation is consistent with our current policy. Applicants will continue to report all revenues deriving from activities on the Federal property (*e.g.*, from mining, forestry, grazing etc.), but need not report the DOI PILT revenues.

Changes: The final regulation clarifies that only payments for activities conducted on Federal property will be included as other Federal revenue in the ESEA section 7002 eligibility and payment calculations. The final regulation also gives examples of the types of Federal revenue that must be reported, and stipulates that Impact Aid and other Department payments should not be reported as Federal revenue.

Comments: Two commenters supported the proposed changes regarding the eligibility requirements for consolidated LEAs and calculating a single real property tax rate at §§ 222.23 and 222.24.

Discussion: We finalize these regulations as proposed.

Changes: None.

Definition of Free Public Education—Exclusion of Charter School Start Up Funds (§ 222.30)

Comments: Two commenters raised concerns about the eligibility of charter schools in general. The Department received three comments in support of the provision that would exclude charter school startup funds from the calculation of determining whether an LEA receives a substantial portion of Federal funds under § 222.30(2)(ii). Another commenter suggested that the regulations specify the types of charter school funds to be excluded, and the process by which the Secretary determines whether Federal funds provide a substantial portion of the LEA's educational program in relation to other LEAs in the State. All commenters agreed that the provision is consistent with the intent of the statute.

Discussion: Some charter schools are eligible for Impact Aid because they qualify as an "LEA" under State law and meet the other eligibility requirements. In order for any LEA to be eligible for Impact Aid, it must demonstrate that its funding comes primarily from non-Federal revenue sources. Under the current statute, when determining Federal revenue amounts, the Impact Aid Program does not include Title I Part A funds.

Under section 7003(a) of the Act, an LEA can only claim students for Impact Aid if the LEA provides a free public education to those students. Section 7003 Impact Aid funds are intended to replace local revenues lost due to Federal activity. Under the current regulations, if Federal funds are providing for the educational program (*e.g.*, schools funded by DOI), that Federal source already compensates for the lack of local tax revenue. As a result, the LEA is not eligible for Impact Aid for those students.

The amended regulation would exclude Federal charter school startup funds from the calculation of whether Federal funds provide a substantial portion of an LEA's program. These funds are generally available in the first two years of a charter school's operations; the funds can be used for a host of purposes other than current expenditures, and are not long-term funding sources.

Under the amended regulation, in analyzing the share of the education program funded by Federal sources, the Department would compare the LEA's finances to other LEAs in the State to account for circumstances unique to the State. After considering whether to specify the exact Federal grant program funds that may be excluded under this provision, we decline to do so in these regulations, because those programs may change over time. Program staff will coordinate with the Charter Schools Program to ensure that the appropriate funds are excluded.

While the calculation of a substantial portion of Federal funds is not changing under these regulations, we also decline to state a specific formula for that analysis, to be able to fairly analyze the portion of Federal funding for LEAs in different States. The Department compares an LEA's portion of Federal funding to other LEAs in that State to avoid funding disparities among States that may skew or create a disadvantage for an LEA. The amount of Federal funding that an LEA receives, as a percentage of all revenues, can vary greatly from State to State. For example, for the FY 2016 Impact Aid application year, State X LEAs had a Federal contribution average of 12.13 percent whereas State Y LEAs had a Federal contribution average of 6.33 percent. Comparing the percentage of Federal funds to all LEA revenues for State Y LEAs and State X LEAs could disadvantage State X LEAs. For that reason, we continue to resolve these questions on a case-by-case basis comparing LEAs only to other LEAs in the State.

Changes: None.

Timely and Complete Applications (§§ 222.32 and 222.33)

Comments: Many commenters opposed the proposed language in § 222.32 that clarifies that an LEA's submission of its membership count of federally connected students must be part of the LEA's timely and complete application. No commenters favored this change. Commenters interpreted this change to mean that an LEA may not amend its membership count.

Discussion: This regulatory change does not prohibit an LEA from amending its application under the conditions specified in § 222.5(b), including when data become available that were not available at the time of the application.

The current regulations require that an applicant submit a complete and signed application by the deadline (34 CFR 222.3(a)(1)). The Department's longstanding policy requires an accurate membership count as of the application deadline. The LEA's authorized representative certifies, by signing the application cover page, that the statements contained in the application and the data included are, to the best of the authorized representative's knowledge, true, complete, and correct.

Recent application reviews revealed that some LEAs have estimated the number of eligible federally connected students at the time of application, and then used the amendment process to gain time to complete the membership count. This is contrary to the attestation of the authorized representative who signs the application and is contrary to current program rules. This practice delays reviews and payments for all LEA applicants.

Under § 222.5(b)(1), an LEA may amend its application based on actual data regarding eligible Federal properties or federally connected children if the data were not available at the time the LEA filed its application and are acceptable to the Secretary. The survey data should be complete and should reflect data available before the application is submitted. The LEA may report verified data counted through a parent-pupil survey form or a source check document or an approved alternate method (see § 222.35). For example, if an LEA has 1,000 federally connected children in membership, but, at the time of application, has only received 100 parent-pupil survey forms, the LEA may claim those 100 federally connected children; that is the data available when the LEA files the application. If the LEA received 900 additional forms after the application was submitted, or if an additional source check document post-application shows 900 students, the LEA may amend its application to include the newly-documented federally connected children.

The amended regulation in § 222.32 is intended to underscore the importance of accurate applications. Complete and accurate application data supports timely processing of all applications and speeds payments to all LEAs. To further explain that the student count data submitted with an application must be verified data and not an estimate, in § 222.33(c) we revised the proposed language that the data be "complete by the application deadline" to requiring that it be "accurate and verifiable" by the deadline.

Changes: In section 222.33(c) we change "complete" to "accurate and verifiable" in describing the student count data to be submitted with an application.

Second Membership Count (§ 222.33–222.34)

Comments: Numerous commenters opposed the proposed elimination of a second membership count. Commenters generally stated that eliminating the second membership count might unfairly penalize an LEA that experiences an influx of federally connected children between February and May. Commenters asked to retain this provision as it is important for LEAs located near military installations whose student enrollment may increase unexpectedly due to military activities. In these instances eliminating the option to submit a second membership count would delay increased Impact Aid funding for a full school year.

Discussion: While this provision is seldom used, the Department recognizes the provision's importance to certain applicants whose student enrollment may increase unexpectedly during the school year.

Changes: The proposed changes to eliminate the second membership count in §§ 222.5(b)(1), 222.33, and 222.34 are not included in the final regulations.

Parent-Pupil Survey Forms and Source Checks (§§ 222.33–222.35)

Comments: The comments to the proposed changes generally supported the clarification of information required on a parent-pupil survey form. The commenters did, however, request that the Department allow an applicant to report multiple children from one family on the same form, to reduce burden on parents with multiple children.

Commenters also universally opposed the requirement that LEAs document children residing on eligible Indian lands and in eligible low-rent housing with a source check form. The commenters stated that requiring the source check could increase the administrative burden for some LEAs and force a duplicative process, particularly for large LEAs. Others argued that some LEAs have sophisticated operations in place to collect data through a parent-pupil survey; it could be burdensome for those districts to change their methods. Further, commenters stated that there are only two current data-collection methods; the authority over which method to use should remain a local decision.

A few commenters asked for flexibility in requiring a complete address or legal description for certain Federal properties. The commenters stated that certain Federal agencies prohibit employees from sharing their work location. These commenters contend that funding for many federally connected children is being lost due to the national security concerns of other Federal agencies.

Discussion: The Department appreciates the support for the clarification of the information required on a parent-pupil survey form. With regard to the issue of whether multiple children can be reported on one form, there is no regulatory prohibition against this practice, either in the current or these final regulations. The Department will permit this practice; however, the forms must indicate if the children are to be split among different application tables. For example, if one military family resides on a military installation with three children claimed on one survey form, and one of the three children has a disability and an active Individualized Education Plan (IEP), then that child should be reported on one application table, while the other two children should be claimed on another application table. When more than one child is listed on one form, the LEA is responsible for clearly documenting the application table on which the children were reported. The LEA also ensures the form shows all required information for each child listed.

The opposition to requiring source checks for children residing on eligible Indian lands and children residing on eligible low rent housing was uniform. The Department will not finalize the proposed amendment to § 222.35, and will continue to allow LEAs to use parent-pupil survey forms for all children. However, if there is no evidence establishing the eligibility of the Federal properties for children who reside on Indian lands or in low-rent housing, additional certifications may be required. The LEA is responsible for ensuring that the properties where the children reside are eligible Federal properties, and must be able to provide the supporting documentation establishing the eligibility of the property. For example, an LEA may document 50 children residing on Indian lands through the use of parent-pupil survey forms. The LEA must also have on file documentation establishing that the Indian lands claimed meet the statutory definition of "Indian lands." The LEA may be required to have the Bureau of Indian Affairs (BIA) or a delegated tribal official (with access to the property records) certify that the lands meet one of the categories of eligible Indian lands under the definition. To meet this requirement the LEA could send to the appropriate official the legal descriptions of the lands where the children reside, to have the list certified as eligible Indian lands.

The Department appreciates the concerns expressed regarding lost funds for federally connected children whose parents are prohibited from releasing their work locations. Impact Aid funding is based on the identification of eligible Federal properties, with the exception of payments for children described in sections 7003(a)(1)(D)(i) and 7003(a)(1)(D)(ii) of the Act. The Department is responsible for ensuring that payments are made correctly and within the limits of the statute. Many Federal government employees do not work on an eligible Federal property. The Department will work with other Federal agencies and LEAs to try to obtain an approved method to identify the Federal property. The current regulations in §§ 222.35(a)(1)(ii)(A) and (C) allow for alternative location information for a child's residence or a parent's place of employment, and this flexibility is retained in these final regulations (paragraphs 222.35(a)(2)(ii)(A) and (a)(3)(i)(B)). For example, alternative location information may be the name of a widely recognized military installation or Federal site for which the name and location are commonly known but typically not represented by a street address, such as the Pentagon or Jewel Cave National Monument.

To further assist LEAs who have difficulty obtaining information for students residing with a parent on Federal property, and for parents working on Federal property, and for the reasons stated above in the discussion of "Methods of Data Collection," we have added paragraph (c) to § 222.35 to permit an LEA to propose a third option for collection of data.

Changes: In § 222.35 we add paragraph (c) to permit a third data collection option. The proposed change to require a source check for children residing on eligible Indian lands and children residing on eligible low rent housing in proposed § 222.35(b)(1) is not included in the final rule.

State Average Attendance Ratios (§ 222.37)

Comments: Uniformly, all comments on this section supported the Department's proposal to allow any State to use a State average daily attendance (ADA) ratio. Commenters stated that the proposed regulation will expedite the payment process by allowing the Secretary to calculate an ADA ratio for the 15 States that do not currently use a ratio.

Discussion: The Department appreciates the support for this amended regulation.

Changes: None.

Rationale for the Use of Special Additional Factors for Determining Generally Comparable LEAs (§ 222.40)

Comments: One commenter read the proposed regulation to mean that an LEA would be required to submit generally comparable district (GCD) data at the time of application, which would shift the data collection burden from the Department to the LEA.

One commenter said that a rationale for the use of special additional factors is unnecessary, as the use of factors is already outlined in the regulations. Two commenters proposed that an SEA submit an overarching policy statement on the use of additional factors in the State, and not be required to submit a rationale for each individual LEA. The policy statement would only need to be updated if the policy changed.

Two commenters mentioned that the Department has recently rejected the data provided by the SEA, or has asked for it in a manner or format that is inconsistent with the States' policies.

Discussion: This regulatory change does not affect the process by which the SEA annually submits the GCD data, at the request of the Department; the LEA is not required under this provision to submit the information. The Department sends a memo to the SEAs each year asking for GCD data and provides the regulations that specify how the data should be presented. The LEA does not normally play a role in the collection or submission of GCD data. The proposed regulation would not have changed this process; however, we have revised § 222.40(d)(1)(iii) to clarify that the SEA, not the LEA, must submit the GCD data at the request of the Department.

Section 222.40(d)(1) includes examples of special additional factors that can be used in determining GCDs, used for both the local contribution rate determined under § 222.40, and for heavily impacted districts under the limited circumstances in § 222.74. Consistent with the ESEA (7703(b)(1)(C)(iii)), regulations (§ 222.40(d)), and longstanding program policy, we require an SEA that uses a special additional factor or factors in selecting GCDs to submit the resulting local contribution rates and a description of the additional factor or factors of general comparability and the data used to identify the new group of generally comparable LEAs. The current regulations in § 222.40(d) contain the rules for what type of additional factors may be considered, and require that the factors be objectively defined and must "affect the applicant's cost of educating its children." The Secretary analyzes the data to ensure that it meets the purposes and requirements of the statute and regulations. In order to make this determination, the SEA submission must include a description of how the selected factors increase the education costs for the LEA.

In response to the commenter that argued that the rationale for the use of special additional factors is unnecessary because examples of special additional factors are outlined in the regulations, the Department notes that the presence of an example does not suggest that it would be an acceptable factor for every LEA; the regulations require that the factor must increase costs for that particular LEA. Thus each LEA's individual characteristics will dictate the suitable cost factors for selecting its GCDs. For the reasons stated above, an SEA cannot submit one overarching memo to explain the use of special additional factors for all the LEAs in the State.

With regard to the comment concerning SEA data that IAP rejected, the regulations in § 222.39 specifically describe how the data must be sorted to identify GCDs. If a State submits data that is not organized in such a way that the analysis can be conducted under § 222.39, the Department may ask the SEA to produce the data in a manner that is consistent with § 222.39.

Changes: Proposed § 222.40(d)(1)(iii) is revised to clarify that the SEA, not the LEA, submits the GCD data at the request of the Department, and to specifically require that an SEA that uses any additional factor will be required to submit a rationale for its use with its annual submission of generally comparable district data.

Eligibility for Heavily Impacted LEAs (§ 222.62)

Comments: The majority of respondents opposed the proposed regulation that would require LEAs to submit heavily impacted data with the application. They claimed that this will place an additional burden on LEAs applying under section 7003(b)(2) of the Act. One commenter appreciated the need to speed the processing of applications for these LEAs; however, the commenter opposed shifting the data collection burden by requiring LEAs applying for section 7003(b)(2) funding to provide the tax rate, per-pupil expenditure, and federally connected membership percentage data with the application. The commenter contended that LEAs—even continuing LEAs—may not have access to this information, and if they do, they may not have access to this information by the application deadline. The commenter was concerned that LEAs applying for consideration under section 7003(b)(2) of the Act would have to rely on the State to provide this information in a timely manner. With limited resources at the State level, an LEA may not be able to obtain the data by the application deadline, thereby losing its ability to be considered for funding under this provision. The commenter was further concerned that this proposal would shift the collection of this data from the Department to LEAs, and increases the administrative burden for LEAs. The commenter encouraged the Department to consider clearly stating the eligibility requirements on the application form as that might reduce the number of ineligible districts that apply.

A few commenters had concerns about the Department using data other than that submitted by the SEA. One commenter stated that the SEA was better equipped to make calculations with its data than the Department. Another commenter suggested that the Department provide technical assistance to the heavily impacted LEAs, including the name of the SEA contact. The commenter said that LEAs feel "out of the loop" and some LEAs have different tax rates than what the SEA provides to the Department.

One commenter noted that the timing involved with SEAs and LEAs reporting tax rates may not allow for changes in the tax rates. The commenter was concerned that any changes may not be reported to the Department to reflect the current rates.

One commenter stated that asking an LEA to submit data with the application may give the false impression that the LEA is eligible before an eligibility determination is made by the IAP.

The Department received two comments in support of this provision. The commenters noted that the provision of tax rate data at the time of application would speed the processing of heavily impacted applications.

Discussion: The proposed regulation should have specified that the LEA will be required to provide only its tax rate and the State average tax rate for the third preceding year with the IAP application. The application uses tax rate data from the third preceding year, as required by the statute, and that data should be readily available at the time of application. In providing these data the applicant LEA will demonstrate its understanding of the eligibility requirements for these payments and preliminary evidence that it meets the requirements. Currently, many applicants request consideration for payment under section 7003(b)(2) of the Act without evaluating whether they meet the tax rate requirement. Requiring the tax rate data with the application will allow the Department to more quickly determine initial eligibility and focus on making timely and accurate payments to LEAs that are eligible for funding under this provision. Most SEAs or State Departments of Revenues have this data available on their respective Web sites.

The tax rate data submitted by the LEA with the application will not be used to make final heavily impacted eligibility determinations; rather, the certified tax rate submitted by the SEA under § 222.73 will be used to determine the LEA's final tax rate eligibility and the category under which the LEA will be paid. Thus, if the tax rate data initially submitted by an LEA was obtained from the SEA and is confirmed by IAP to be accurately calculated and the final State tax rate data for the third preceding fiscal year, no further tax rate data will be needed to complete the program's eligibility determinations related to average tax rate. However, if the tax rate submitted with the application does not match the data submitted by the SEA under § 222.73, IAP may need to further evaluate the tax rate data provided. For example, if the SEA amends its tax rate data after the LEA's initial submission but before the LEA's application is reviewed, IAP may need to conduct an additional review of the tax rate data. If the LEA provides initial tax rate data or the SEA provides later final State tax rate data that shows that the LEA does not meet the tax rate requirement, then the LEA will not receive heavily impacted funding.

The Department is constantly reviewing its internal process for consistency and efficiency. The Department welcomes any suggestions for improvements for communicating with LEAs. If an SEA submits data that the LEA believes is incorrect, the LEA should discuss this with the SEA and the Department. Our Web site contains a list of SEA representatives for each State located at *http://www2.ed.gov/about/offices/list/oese/impactaid/searl.html.* If an SEA presents data that is not organized in such a way that the Department can conduct the heavily impacted eligibility determination, the Department may ask the SEA to produce the data in a manner that is consistent with the requirements in the statute. For example, if an SEA submits a total tax rate instead of a tax rate for current expenditures only, as required by the statute, the Department requires the SEA to submit corrected data.

With regard to the comment about the timing of the reporting of tax rates, the statute requires the Program to use third preceding year tax rates, so that accurate final data will be available for completing heavily impacted LEA eligibility determinations.

With regard to whether the requirement to submit data with the application will generate confusion about eligibility status, the Department will work with LEAs to make sure that the heavily impacted eligibility status is clear.

Changes: The final regulation adds language to specify that the LEA must provide its tax rate data with the annual application, and that the SEA will verify final tax rate data under the process in § 222.73.

Indian Policies and Procedures (IPPs)(§ 222.91–95)

Comments: Most commenters made the point that the majority of the relationships between tribal entities and LEAs are strong and that both parties work to ensure a positive relationship that provides equal participation of Indian lands children in the educational program. There was general support for the extension of time that an LEA has to amend its IPPs from 60 days to 90 days. The majority of all comments on this part of the proposed regulations opposed any regulatory action that would increase burden on LEAs; however, they did not specify which provisions might constitute an additional burden.

One commenter suggested that if an LEA's total student population residing on Indian lands exceeds 70 percent, the Department should reasonably be able to assume that students residing on Indian lands are receiving an education on an equal basis with other children. In these situations, the commenter suggested that an automatic waiver of the requirements for Indian Policies and Procedures (IPPs) should be considered for these LEAs. The commenter suggested that this rule might lessen the administrative burden on the Department by reducing the number of IPP reviews that are conducted annually.

Two entities representing Impact Aid LEAs that have children residing on Indian lands favored the regulation requiring the LEA to provide a written response to the comments, recommendations and concerns brought to the LEA by the parents of Indian children and tribes regarding the educational services the LEA is providing to Indian children. One commenter encouraged open communication between LEAs and tribes and parents of Indian children throughout the year, and not just during the consultation process.

One commenter also supported the requirement that, when a tribe supports an LEA's request to waive the IPP requirements, the tribe must attest that it has received a copy of the IPPs and is aware of the rights the tribe is waiving.

A few commenters stated that there is a fundamental lack of understanding about the purpose of Impact Aid funds and how they can be used, which is at the discretion of the school board. One commenter suggested that requiring a tribe to sign off on the Impact Aid application would provide the tribe unintended and unauthorized power to disrupt a payment. The commenter argued that the written notification to tribal officials from the LEA should be more than adequate. This commenter also stated that adding burdensome requirements to a subjective process will not provide clarity and order.

A few commenters requested that the Department define what constitutes a "reasonable" request from parents of children residing on Indian lands and tribal officials. The commenters stated that factors such as budget constraints may prevent a district from agreeing to certain requests.

Several commenters supported the Department's proposal to increase flexibility within the withholding of payments provision in § 222.95. Under the new language, in case of a violation, the Department would be able to withhold part of an LEA's payment or the entire payment.

Several commenters stated that there is a need for intermediary steps between filing a complaint with the Department, and the penalty that the Department withholds a payment to an LEA as a result of the complaint. Specifically, one commenter suggested the Department provide technical assistance or mediation at the request of either party, establish positive incentives rather than punishment, and issue non-regulatory guidance to advance the shared goal of better communication, rather than imposing additional requirements for LEAs. The commenter was concerned that the regulations will add additional steps to the application process and require additional time and burden for LEAs, particularly when noncompliance may lead to withholding Impact Aid funds.

One commenter was concerned that the proposed requirements could lead to a hostile situation between the LEA and the tribes and parents of children residing on Indian lands. The commenter urged the Department to better explain to tribes and parents that Impact Aid grant funds are treated like local revenues and can be expended at the discretion of the LEA.

One commenter urged the Department to refrain from using the term "Indian" as it is viewed as a derogatory reference. Instead, the commenter urges the Department to replace the term with "Native American."

Discussion: The Department recognizes that the majority of relationships between LEAs, tribal leaders, and the parents of children residing on Indian lands are strong and that the entities work together to provide the best educational services to children residing on Indian lands. However, due to IPP issues that have arisen during Program oversight of the IPP requirements, as well as from comments received during the Department's tribal consultations on the proposed regulations (see NPRM, 80 FR 81477, 81478), we believe that changes to the regulations are needed to effectuate the intent of the statutory IPP requirements.

The Department does not have the authority under the statute to grant blanket waivers through the regulatory process. Moreover, because LEAs receive additional IAP funding for each student residing on Indian lands, and those funds are not required to be spent on those specific students, Congress enacted the IPP requirements to ensure that those students participate on an equal basis with other students and that their parents and their tribe have input into the LEA's general educational program and activities (ESEA section 7004, as amended by ESSA). The process is about more than simply equal access; it is also about ensuring that the tribes and parents of children residing on Indian lands have a mechanism for providing input into the educational program.

One of the concerns that arose during the Department's tribal consultation was the lack of LEA communication back to the parents or the tribe that have made recommendations or comments to the LEA. As recognized by several of the commenters, requiring LEAs to provide a response to the tribes and parents of children residing on Indian lands is important to ensure that the input receives meaningful consideration; written response to all comments is a standard business practice when consultation or public input has occurred. In the Federal government, for example, the rulemaking process ensures the public is allowed to comment on and make recommendations for changes in regulations. Once the comments are received, the Federal government is required to respond to the comments in its final regulatory document.

Although we do not wish to impose additional and unnecessary burden on IAP applicants, we do not think it is unreasonable or overly burdensome for LEAs to provide feedback by notifying the tribes and parents of children residing on Indian lands how their recommendations, comments, or concerns were addressed. The vast majority of these consultations occur in a public forum in which minutes are taken. Assembling the comments, concerns, and recommendations and explaining how or why they are or are not implemented is a significant part of ensuring meaningful consultation.

The Department appreciates support for the amended regulation that would require a tribe to attest that it has received a copy of the IPPs before the tribe provides the LEA with a waiver of the rights afforded the tribe under the IPP consultation process. The IAP's tribal consultation (see NPRM (80 FR 81477) revealed that some tribal officials are not receiving copies of the IPPs and were being asked to waive their rights without being informed of those rights. Informed consent is imperative in the waiver process. To ask for a waiver to expedite the application process without providing the tribe with the information it needs to make an informed decision goes against the intent of the IPP consultation process.

With regard to the comment that giving the tribes the authority to sign off on the application provides the tribe with unintended and unauthorized power, the Department would like to clarify that the tribe does not sign off on the Impact Aid application before it can be submitted, and would not be required to do so under the proposed or final regulations. Under these final regulations, the LEA will be required to sign an assurance indicating that it has replied in writing to the tribes' and parents' comments, concerns, and recommendations before submitting the application. The LEA should retain documentation to demonstrate that the LEA has complied with this communication requirement. For example, if the LEA's communication is emailed or faxed to the tribe, the LEA should retain the fax transmission document or a "read receipt" for an email to demonstrate that the document was sent and received by the appropriate tribal officials. If an LEA sends home with children who reside on Indian lands a copy of that communication for the parents, the LEA should retain a copy of the memo to demonstrate that the LEA has made a good faith effort to inform parents of such children about how the LEA has or has not implemented recommendations or rectified concerns identified during the IPP process.

With regard to the suggestion that the Department provide guidance on what constitutes a reasonable request by a tribe or parent of a child residing on Indian lands relating to improving the LEA's educational program or activities, it is not appropriate for the Department to set guidelines around what recommendations may or may not be appropriate for an LEA to adopt. This is a matter that varies by the local situation. As we clarify in these amended regulations, the legal responsibility of the LEA is to ensure that tribes and parents have an opportunity to give meaningful input, and to thoroughly consider any comments and recommendations in its decision-making process.

We appreciate the support for the option in § 222.95 under which the Department may withhold part of a payment to an LEA for an IPP violation in addition to having the authority to withhold the entire payment. Through both the tribal consultation and the comments received in response to this NPRM, the Department has heard that the withholding of all funds can severely disrupt the provision of educational services. Under the amended regulation, the Department could, for example, elect to withhold only the part of the Impact Aid payment associated with the .25 additional weight afforded to children residing on Indian lands until a dispute is resolved or an IPP is corrected. If an LEA is noncompliant, each case at the stage of the proceeding referenced in the regulation will be reviewed on its own merits, and the Department will fully explain what the LEA needs to do to become compliant and receive the withheld funds.

In response to comments about the need for ways to resolve disputes other than a tribe filing a formal complaint and the Department withholding payment to an LEA for a violation of the IPP requirements, these are statutory steps that will continue to be available. However, the Department encourages the use of third-party mediation to resolve issues and can suspend a complaint upon request of the complainant to allow for such a process. The Department can provide technical assistance on the IPP consultation process, but cannot act as a mediator to resolve issues between the parties. The Department is open to suggestions on how it can provide non-regulatory guidance as a method to advance the shared goal of better communication.

The Department appreciates the comment about providing positive incentives to comply with the IPP process and the need for technical assistance and possibly non-regulatory guidance to all parties for the IPP consultation process. Although the Department must respond to complaints pursuant to the procedure required by the statute, we welcome any ideas for how to inject positive incentives or specific technical assistance from any person or organization with an interest in this process.

The Department is aware that certain tribal officials and parents of children who reside on Indian lands believe that they should be able to dictate to the LEA how Impact Aid funds are used. This is an issue outside the scope of these regulations and the statute, as the Impact Aid statute generally imposes no restrictions on the use of basic support funds (State or local restrictions may apply) provided for students residing on Indian lands; however, the Program will make an effort to clarify this when providing technical assistance to LEAs.

The Department appreciates the concerns related to the use of the term "Indian." IAP uses this term to reflect the statutory definition of "Indian lands" and related provisions. IAP does not use the term "Native American" as it is too broad to fit the scope of the statute and these regulations, which are limited in relevant part to school districts that claim students who reside on "Indian lands" regardless of their ethnicity. For these reasons, we retain the use of the term "Indian Policies and Procedures."

Changes: None.

Section 7009 (§§ 222.161–222.164)

Comment: Several commenters supported the changes to the equalization regulations. One commenter specifically supported the provision that provides a process by which, if IAP's determination is delayed, States can get permission from the IAP to make estimated State aid payments that take into account Impact Aid receipts. The commenter stated that this process would prevent LEAs from having to pay back the State if the IAP eventually certifies the State as equalized. Another commenter, however, stated that allowing a State to withhold an LEA's aid without an equalization certification from the Department is inexcusable. The commenter further contended that allowing SEAs to withhold State aid while the determination process is ongoing could result in inaccurate State aid payments that may take months or years to correct.

Discussion: Section 7009(d)(2) of the Act prohibits States from taking Impact Aid into consideration as local revenues when making State aid payments before the Secretary certifies that the State's program of aid is equalized. Section 222.161(a)(6) will give States undergoing the section 7009 certification process the option, with the Department's permission, to make estimated State aid payments that count Impact Aid as local effort in cases where we have not been able to determine whether the State meets the equalization requirements before the start of the State's fiscal year. This may happen when an LEA requests a pre-determination hearing, which, due to the timeline required, is held just two to three months before the State's fiscal year begins. When the issues presented at that hearing are complex, it can take time for us to work through the legal issues and make a determination.

Currently, States do not request permission to make estimated payments that take Impact Aid into account as local effort when the determination process in ongoing, and there is no timeframe for when States must correct payments if we decline to certify that the State's program is equalized. While we agree that allowing States to make estimated aid payments that account for Impact Aid before we have certified the State to do so may result in incorrect estimated payments, the regulation is intended to reduce budgetary uncertainty for States as well as LEAs. If a State is prohibited from reducing estimated payments when a determination is delayed, LEAs could have to pay back to the State large sums if the IAP ultimately certifies the State. The new provision allows us to consider the State's past record, and any changes to its State aid formula, before we give permission to make estimated State aid payments. It also ensures that, in cases where we decline to certify, estimated payments that the State reduced for Impact Aid funds will be corrected within 60 days. However, upon further analysis of the possible scenarios under this provision, we have deleted the proposed 30-day time limit for States to request permission to make estimated payments that take into account Impact Aid, to allow more flexibility.

Changes: None.

Comment: One commenter requested that the Department provide an example in § 222.162 of how it accounts for special cost differentials in the disparity test using the four methods outlined in the proposed regulation.

Discussion: Every State's funding formula is different, which makes it difficult to provide practical, instructive examples. We will provide technical assistance, including examples of actual approved disparity test data submissions, to anyone interested in the section 7009 process. Every State certified in recent years has accounted for special cost differentials using one of the four methods.

Changes: None.

Comment: One commenter requested that the Department provide examples of cost differentials.

Discussion: Cost differentials are discussed at length in § 222.162(c)(2), including examples.

Changes: None.

Comments: Two commenters favored the proposed regulation at § 222.164 which requires the Department to inform the State and LEAs of the right to request a pre-determination hearing when a proceeding is initiated under section 7009.

Discussion: We finalize this regulation as proposed.

Changes: None.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits: In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. Upon review of the costs to the LEA, we have determined there is minimal financial or resource burden associated with these changes, and that the net impact of the changes would be a reduction in burden hours. Certain affected LEAs would need to respond in writing to comments from tribes and parents of Indian students, but this time burden would be balanced by other proposed regulatory changes, which result in a net decrease of both burden hours and cost associated with these regulations.

Elsewhere in this section, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995

In the **Federal Register** (80 FR 81487–81489), the NPRM identified the sections of the proposed regulations that would impact the burden and costs associated with the information collection package. Sections 222.35, 222.37, 222.40, 222.62, and 222.91 contain information collection requirements. Under the PRA the Department submitted a copy of these sections to OMB for its review.

In the NPRM (80 FR 81487–81489), we estimated the total burden for the collection of information through the application package to be 104,720 hours. This estimation was based largely on a decrease in hours resulting from proposed changes related to the requirement for source check documents for children residing on Indian lands and low rent housing in § 222.35. This proposed change would have significantly reduced the number of parent pupil survey forms collected annually. After consideration of the public comments, we have decided to not include the proposed changes to § 222.35 in the final rule. The changes to the burden estimates from the proposed rule are summarized below.

Collection of Information

Revised Burden Hours for Section 222.35

The proposed regulations would have required that LEAs claiming children who reside on Indian lands and children who reside in low-rent housing use a source check document to obtain the data required to determine the children's eligibility. This change would have significantly decreased the burden hours for the collection of parent-pupil survey forms and increased the burden hours for the use of source check forms. The proposed regulation would have reduced the number of respondents for parent-pupil survey forms from 500,000 to 355,000, which would have resulted in a decrease of burden hours from

125,000 to 88,750 burden hours. Based on strong public opposition to this change the Department has decided not to include this change in the final rule. Since this change is no longer being revised, the burden hours for this provision remain 125,000. The total number of respondents for parent-pupil survey forms remains 500,000.

The proposed change that would have mandated the use of source check forms for children residing on Indian lands or children residing in low-rent housing would have doubled the number of source checks being collected annually. The Department, therefore, increased the burden associated with source check forms from 1,500 hours to 3,000 hours in the NPRM (80 FR 81487). As this change is not included in the final rule, the burden hours for completing a source check remain 1,500 total burden hours. The average number of burden hours for an LEA to complete the application was reduced from 10 hours to 9 hours due to system enhancements that have streamlined the process. This estimated change resulted in an overall decrease in burden hours of 1,264. The dollar amount of this change is estimated to be a decrease of $23,352.

The revised burden for this information collection package is depicted in the following tables. Table 3 (80 FR 81489) remains unchanged, but is included here for reference.

TABLE 1—SUMMARY OF BURDEN HOURS TO SUBMIT A COMPLETE IMPACT AID APPLICATION PACKAGE

By regulatory section or subsection	Total annual burden hours under current regulations	Estimated total annual burden hours under the final regulations
34 CFR 222.35, 34 CFR 222.50–52 IAP Application Tables 1–5	139,140	137,876
34 CFR 222.37, IAP Application IAP Application Table 6	1,264	100
34 CFR 222.53 IAP Application Table 7	217	217
34 CFR 222.141–143 IAP Application Table 8	5	5
Reporting Construction Expenditures	40	40
Housing Official Certification Form	13	5
Indian Policies and Procedures (IPPs)	0	187
IPP Responses *	0	1,040
TOTAL	140,679	139,470
Number of LEAs	1,265	1,264
Average Hours Per LEA (total divided by number of LEAs)	111.2	110.3

* Denotes changes directly associated with the final regulatory changes

TABLE 2—REPORTING NUMBERS OF FEDERALLY-CONNECTED CHILDREN ON TABLES 1–5 OF THE IMPACT AID APPLICATION

Task	Current estimated number	Estimated number under final rule	Average hours	Total hours	Explanation
Parent-pupil surveys	500,000	500,000	0.25	125,000	Assumes 500,000 federally-connected children identified through a survey form completed by a parent.
Source check with Federal official to document children living on Federal property (LEAs).	500	500	3	1,500	Assumes 3 hours to verify information on a source check.
Collecting and organizing data to report on Tables 1–5 in the Application (LEAs).	1,265	1,264	9	11,376	Assumes time to complete and organize survey/source check data on federally-connected children averages nine hours
Total Current				137,876	
Total Previous				139,140	
Change				−1,264	

TABLE 3—ADDITIONAL REPORTING TASKS AND SUPPLEMENTAL INFORMATION ON TABLES 6–10 OF THE IMPACT AID APPLICATION

Task	Current estimated number	Estimated number under final rule	Average hours	Total hours	Explanation
Reporting enrollment and attendance data on Table 6 (LEAs).*	1,264	100	1	100	The final regulations would reduce the number even further to approximately 100 LEAs who will have a higher attendance rate than the State average.

TABLE 3—ADDITIONAL REPORTING TASKS AND SUPPLEMENTAL INFORMATION ON TABLES 6–10 OF THE IMPACT AID APPLICATION—Continued

Task	Current estimated number	Estimated number under final rule	Average hours	Total hours	Explanation
Collecting and reporting expenditure data for federally-connected children with disabilities on Table 7(LEAs).	869	868	.25	217	This assumes that an average of 868 LEAs received a payment for children with disabilities in the previous year and is required by law to report expenditures for children with disabilities for the prior year.
Reporting children educated in federally-owned school buildings on Table 8 (LEAs).	5	5	1	5	Assumes LEAs maintain data on children housed in the small number of schools owned by ED but operated by LEAs
Reporting expenditures of Section 7007 funds on Table 10 (LEAs).	159	159	0.25	40	Assumes that the LEAs eligible to receive these funds have ready access to financial reports to retrieve and report these data.
Indian Policies and Procedures (IPPs).	625	625	0.3	187	The LEA does not have to collect any new information to meet this requirement.
IPP Response *	0	800	1.3	1,040	This assumes some LEAs may have to respond to more than one tribe.
Contact Form for Housing Undergoing Renovation or Rebuilding.	10	10	0	0	The time associated is too small to calculate (<5 minutes per applicant).
Housing Official Certification Form	10	10	.50	5	Amount of time for the housing official to estimate the number of school-age children that would have resided in the housing had it not been unavailable due to renovation or rebuilding.
Total Current				1,594	
Total Previous				1,529	
Change				65	

* Denotes changes directly associated with the final regulatory changes.

TABLE 4—ESTIMATION OF ANNUALIZED COST TO APPLICANTS

Respondent	Hours per response	Rate ($/hour)	Number of respondents	Cost
Parent Respondents	.25	10	500,000	$1,250,000
LEA Respondents	9	15	1,264	170,640
Total Cost				1,420,640
Prior Cost Estimate				1,443,992
Cost Change				−23,352

The Department has also added a provision to § 222.35(c) that allows LEAs to propose alternative methods of data collection and the Department's intention to allow for electronic data collection and submission. We anticipate that this will yield significant time savings for LEAs who elect to use these options. This savings cannot yet be quantified, but we expect to revise the burden hours and costs once we have more data.

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person [one of the program contact persons] listed under **FOR FURTHER INFORMATION CONTACT**.

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(Catalog of Federal Domestic Assistance Number 84.041 Impact Aid)

List of Subjects in 34 CFR Part 222

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Federally affected areas, Grant programs, education, Indians, education, Reporting and recordkeeping requirements.

Dated: September 13, 2016.

Ann Whalen,

Senior Advisor to the Secretary, Delegated the Duties of the Assistant Secretary of Elementary and Secondary Education.

For the reasons discussed in the preamble, the Assistant Secretary for Elementary and Secondary Education amends part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222—IMPACT AID PROGRAM

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

■ 2. Section 222.2(c) is amended:

■ A. In the definition of "Membership" by revising paragraph (3)(iv) and adding paragraph (3)(v).

■ B. By revising the definition of "Parent employed on Federal property".

The revisions read as follows:

§ 222.2 What definitions apply to this part?

* * * * *

(c) * * *

Membership * * *

(3) * * *

(iv) Attend the schools of the applicant LEA under a tuition arrangement with another LEA that is responsible for providing them a free public education; or

(v) Reside in a State other than the State in which the LEA is located, unless the student is covered by the provisions of—

(A) Section 7010(c) of the Act; or

(B) A formal State tuition or enrollment agreement.

* * * * *

Parent employed on Federal property. (1) The term means:

(i) An employee of the Federal government who reports to work on, or whose place of work is located on, Federal property, including a Federal employee who reports to an alternative duty station on the survey date, but whose regular duty station is on Federal property.

Example 1: Lauren, a Virginia resident, is an employee of the U.S. Department of Defense. Her physical duty station is in the Pentagon in Arlington, Virginia, and her children attend LEA A in Virginia. Lauren meets the definition of a "parent employed on Federal property" as she is both a Federal employee and her duty station is on eligible Federal property in the same State as LEA A. Thus LEA A may claim Lauren's children on its Impact Aid application.

Example 2: Alex, a Virginia resident, is an employee of the U.S. Department of Defense. His physical duty station is in the Pentagon in Arlington, Virginia, and his children attend LEA B in Virginia. On the survey date, Alex was teleworking from his home. For purposes of LEA B's Impact Aid application, Alex meets the definition of a "parent employed on Federal property," as he is both a Federal employee and his duty station is on eligible Federal property in the same State as LEA B, even though Alex was at an alternative duty station on the survey date because he teleworked. LEA B may claim Alex's children on its Impact Aid application.

Example 3: Elroy is an employee of the U.S. Department of Education. His normal duty station is on eligible Federal property located in Washington, DC. Elroy's place of residence is in Virginia, and his children attend LEA C in Virginia. Elroy, a Federal employee, does not meet the definition of a "parent employed on Federal property." The statute requires that the Federal property on which a parent is employed be in the same State as the LEA (ESEA section 7003(a)(1)(G)), and because the Federal property where Elroy works is not in the same State as LEA C, LEA C may not claim Elroy's children.

(ii) A person not employed by the Federal government but who spends more than 50 percent of his or her working time on Federal property (whether as an employee or self-employed) when engaged in farming, grazing, lumbering, mining, or other operations that are authorized by the Federal government, through a lease or other arrangement, to be carried out entirely or partly on Federal property.

Example 1: Xavier, a dealer at a casino on eligible Indian lands in Utah, reports to work at the casino as his normal duty station and works his eight hour shift at the casino. Xavier's child attends school in LEA D in Utah. For purposes of Impact Aid, Xavier meets the definition of a "parent employed on Federal property" because, although Xavier is not a Federal employee, his duty station is the casino, which is located on an eligible Federal property within the same State as LEA D. LEA D may claim Xavier's children on its Impact Aid application.

Example 2: Becca works at a privately owned convenience store on leased property on a military installation in Maine. Becca's children attend school at a LEA E, a Maine public school district. On a daily basis, including on the survey date, Becca reports to work at the convenience store where she works her entire shift. Becca meets the definition of a "parent employed on Federal property" for LEA E because, although Becca is not a Federal employee, her duty station is the convenience store, which is located on an eligible Federal property within the same State as LEA E. LEA E may claim Becca's children on its Impact Aid application.

Example 3: Zoe leases Federal property in Massachusetts to grow lima beans. Zoe's daughter attends LEA F, a Massachusetts public school. On the survey date, Zoe has a valid lease agreement to carry out farming operations that are authorized by the Federal government. Zoe also has a crop of corn on an adjacent field that is not on Federal property. On the survey date, Zoe spent 75 percent of her day harvesting lima beans and 25 percent of her day harvesting corn. Because Zoe spent more than 50 percent of her day working on farming operations that are authorized by the Federal government on leased Federal property in the same State her daughter attends school, Zoe meets the definition of a "parent employed on Federal property," and LEA F can claim her daughter on its Impact Aid application.

Example 4: Frank is a private contractor with an office on a military installation and an office on private property, both of which are located in Maryland. His time is split between the two offices. Frank's children attend public school in Maryland in LEA G. On the survey date, Frank reported to his office on the military installation. He spent 4 of his 8 hours at the office on the military installation and 4 hours at the privately owned office facility. Frank's children attend LEA G, a Maryland public school. Frank meets the definition of a "parent employed on Federal property" because he reported to work on the military installation and he spent at least 50 percent of his time on Federal property conducting operations that are authorized by the Federal government on eligible Federal property in the same State as LEA G. LEA G may claim Frank's children on its Impact Aid application.

(2) Except as provided in paragraph (1)(ii) of this definition, the term does not include a person who is not employed by the Federal government and reports to work at a location not on Federal property, even though the individual provides services to operations or activities authorized to be carried out on Federal property.

Example 1: Maria delivers bread to the convenience store and the commissary, which are both eligible Federal properties located on a military installation in Florida. Maria's son attends school in LEA H, a Florida public school district. On a daily basis, including the survey date, Maria reports to a privately owned warehouse on private property to get her inventory for delivery. Maria is not a Federal employee and her duty station is the warehouse located on private property. She therefore does not meet the definition of a "parent employed on Federal property" for purposes of Impact Aid. LEA H may not claim Maria's children on its Impact Aid application.

Example 2: Lorenzo is a construction worker who is working on an eligible Federal property in Arizona, but each day he reports to his construction office located on private property to get his daily assignments and meet with the crew before going to the jobsite. Lorenzo's twins attend LEA I, in Arizona. Lorenzo is not a Federal employee and his duty station is the construction office and not the Federal property. Lorenzo therefore does not meet the definition of a "parent employed on Federal property." LEA I may not claim Lorenzo's children on its Impact Aid application.

Example 3: Aubrey, a defense contractor, routinely reports to work at her duty station on private property in California. Aubrey's children attend LEA J in California. On the survey date, Aubrey attends an all-day meeting on a military installation. Aubrey is not a Federal employee and she does not normally report to work on eligible Federal property; as a result, Aubrey is not an eligible parent employed on Federal property, and LEA J cannot claim her children on its Impact Aid application.

(Authority: 20 U.S.C. 7703)

* * * * *

§ 222.3 [Amended]

■ 3. Section 222.3 is amended in paragraph (b)(2) introductory text by removing the phrase "September 30" and adding in its place "June 30".

§ 222.5 [Amended]

■ 4. Section 222.5 is amended in paragraph (a)(2) by removing "the end" and adding in its place "June 30".

■ 5. Section 222.22 is amended by revising paragraphs (b)(1) and (d) to read as follows:

§ 222.22 How does the Secretary treat compensation from Federal activities for purposes of determining eligibility and payments?

* * * * *

(b) * * *

(1) The LEA received revenue during the preceding fiscal year that is generated from activities in or on the eligible Federal property; and

* * * * *

(d) For purposes of this section, the amount of revenue that an LEA receives during the previous fiscal year from activities conducted on Federal property includes payments received by any Federal agency due to activities on Federal property, including forestry, mining, and grazing, but does not include revenue from:

(1) Payments received by the LEA from the Secretary of Defense to support—

(i) The operation of a domestic dependent elementary or secondary school; or

(ii) The provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation;

(2) Payments from the Department; or

(3) Payments in Lieu of Taxes from the Department of Interior under 31 U.S.C. 6901 *et seq.*

* * * * *

■ 6. Section 222.23 is revised to read as follows:

§ 222.23 How are consolidated LEAs treated for the purposes of eligibility and payment under section 7002?

(a) *Eligibility.* An LEA formed by the consolidation of one or more LEAs is eligible for section 7002 funds, notwithstanding section 222.21(a)(1), if—

(1) The consolidation occurred prior to fiscal year 1995 or after fiscal year 2005; and

(2) At least one of the former LEAs included in the consolidation:

(i) Was eligible for section 7002 funds in the fiscal year prior to the consolidation; and

(ii) Currently contains Federal property that meets the requirements of § 222.21(a) within the boundaries of the former LEA or LEAs.

(b) *Documentation required.* In the first year of application following the consolidation, an LEA that meets the requirements of paragraph (a) of this section must submit evidence that it meets the requirements of paragraphs (a)(1) and (a)(2)(ii) of this section.

(c) *Basis for foundation payment.* (1) The foundation payment for a consolidated district is based on the total section 7002 payment for the last fiscal year for which the former LEA received payment. When more than one former LEA qualifies under paragraph (a)(2) of this section, the payments for the last fiscal year for which the former LEAs received payment are added together to calculate the foundation basis.

(2) Consolidated LEAs receive only a foundation payment and do not receive a payment from any remaining funds.

(Authority: 20 U.S.C. 7702(g))

■ 7. Section 222.24 is added to read as follows:

§ 222.24 How does a local educational agency that has multiple tax rates for real property classifications derive a single real property tax rate?

An LEA that has multiple tax rates for real property classifications derives a single tax rate for the purposes of determining its Section 7002 maximum payment by dividing the total revenues for current expenditures it received from local real property taxes by the total taxable value of real property located within the boundaries of the LEA. These data are from the fiscal year prior to the fiscal year in which the applicant seeks assistance.

(Authority: 20 U.S.C. 7702)

■ 8. Section 222.30 is amended in the definition of "Free public education" by revising paragraph (2)(ii) to read as follows:

§ 222.30 What is "free public education"?

* * * * *

Free public education. * * *

(2) * * *

(ii) Federal funds, other than Impact Aid funds and charter school startup funds, do not provide a substantial portion of the educational program, in relation to other LEAs in the State, as determined by the Secretary.

* * * * *

§ 222.32 [Amended]

■ 9. Section 222.32 is amended in paragraph (b) by adding the phrase "timely and complete" after the first instance of "its".

■ 10. Section 222.33 is amended by adding paragraph (c) to read as follows:

§ 222.33 When must an applicant make its membership count?

* * * * *

(c) The data on the application resulting from the count in paragraph (b) of this section must be accurate and verifiable by the application deadline.

* * * * *

■ 11. Section 222.35 is revised to read as follows:

§ 222.35 How does a local educational agency count the membership of its federally connected children?

An applicant counts the membership of its federally connected children using one of the following methods:

(a) Parent-pupil survey. An applicant may conduct a parent-pupil survey to count the membership of its federally connected children, which must be counted as of the survey date.

(1) The applicant shall conduct a parent-pupil survey by providing a form to a parent of each pupil enrolled in the LEA to substantiate the pupil's place of residence and the parent's place of employment.

(2) A parent-pupil survey form must include the following:

(i) Pupil enrollment information (this information may also be obtained from school records), including—

(A) Name of pupil;

(B) Date of birth of the pupil; and

(C) Name of public school and grade of the pupil.

(ii) Pupil residence information, including:

(A) The complete address of the pupil's residence, or other acceptable location information for that residence, such as a complete legal description, a complete U.S. Geological Survey number, or complete property tract or parcel number, or acceptable certification by a Federal agency official with access to data or records to verify the location of the Federal property; and

(B) If the pupil's residence is on Federal property, the name of the Federal facility.

(3) If any of the following circumstances apply, the parent-pupil survey form must also include the following:

(i) If the parent is employed on Federal property, except for a parent who is a member of the uniformed services on active duty, parent employment information, including—

(A) Name (as it appears on the employer's payroll record) of the parent (mother, father, legal guardian or other person standing *in loco parentis*) who is employed on Federal property and with whom the pupil resides; and

(B) Name of employer, name and complete address of the Federal property on which the parent is employed (or other acceptable location information, such as a complete legal description or acceptable certification by a Federal agency).

(ii) If the parent is a member of the uniformed services on active duty, the name, rank, and branch of service of that parent.

(iii) If the parent is both an official of, and accredited by a foreign government, and a foreign military officer, the name, rank, and country of service.

(iv) If the parent is a civilian employed on a Federal vessel, the name of the vessel, hull number, homeport, and name of the controlling agency.

(4)(i) Every parent-pupil survey form must include the signature of the parent supplying the information, except as provided in paragraph (a)(4)(ii) of this section, and the date of such signature, which must be on or after the survey date.

(ii) An LEA may accept an unsigned parent-pupil survey form, or a parent-pupil survey form that is signed by a person other than a parent, only under unusual circumstances. In those instances, the parent-pupil survey form must show why the parent did not sign the survey form, and when, how, and from whom the residence and employment information was obtained. Unusual circumstances may include, but are not limited to:

(A) A pupil who, on the survey date, resided with a person without full legal guardianship of the child while the pupil's parent or parents were deployed for military duty. In this case, the person with whom the child is residing may sign the parent-pupil survey form.

(B) A pupil who, on the survey date, was a ward of the juvenile justice system. In this case, an administrator of the institution where the pupil was held on the survey date may sign the parent-pupil survey form.

(C) A pupil who, on the survey date, was an emancipated youth may sign his or her own parent-pupil survey form.

(D) A pupil who, on the survey date, was at least 18 years old but who was not past the 12th grade may sign his or her own parent-pupil survey form.

(iii) The Department does not accept a parent-pupil survey form signed by an employee of the school district who is not the student's mother, father, legal guardian or other person standing *in loco parentis.*

(b) Source check. A source check is a type of survey tool that groups children being claimed on the Impact Aid application by Federal property. This form is used in lieu of the parent-pupil survey form to substantiate a pupil's place of residence or parent's place of employment on the survey date.

(1) The source check must include sufficient information to determine the eligibility of the Federal property and the individual children claimed on the form.

(2) A source check may also include:

(i) Certification by a parent's employer regarding the parent's place of employment;

(ii) Certification by a military or other Federal housing official as to the residence of each pupil claimed;

(iii) Certification by a military personnel official regarding the military active duty status of the parent of each pupil claimed as active duty uniformed services; or

(iv) Certification by the Bureau of Indian Affairs (BIA) or authorized tribal official regarding the eligibility of Indian lands.

(c) Another method approved by the Secretary.

(Approved by the Office of Management and Budget under control number 1810–0036)

(Authority: 20 U.S.C. 7703)

■ 12. Section 222.37 is revised to read as follows:

§ 222.37 How does the Secretary calculate the average daily attendance of federally connected children?

(a) This section describes how the Secretary computes the ADA of federally connected children for each category in section 8003 to determine an applicant's payment.

(b)(1) For purposes of this section, actual ADA means raw ADA data that have not been weighted or adjusted to reflect higher costs for specific types of students for purposes of distributing State aid for education.

(2) If an LEA provides a program of free public summer school, attendance data for the summer session are included in the LEA's ADA figure in accordance with State law or practice.

(3) An LEA's ADA count includes attendance data for children who do not attend the LEA's schools, but for whom it makes tuition arrangements with other educational entities.

(4) Data are not counted for any child—

(i) Who is not physically present at school for the daily minimum time period required by the State, unless the child is—

(A) Participating via telecommunication or correspondence course programs that meet State standards; or

(B) Being served by a State-approved homebound instruction program for the daily minimum time period appropriate for the child; or

(ii) Attending the applicant's schools under a tuition arrangement with another LEA.

(c) An LEA may determine its average daily attendance calculation in one of the following ways:

(1) If an LEA is in a State that collects actual ADA data for purposes of distributing State aid for education, the Secretary calculates the ADA of that LEA's federally connected children for the current fiscal year payment as follows:

(i) By dividing the ADA of all the LEA's children for the second preceding fiscal year by the LEA's total membership on its survey date for the second preceding fiscal year (or, in the case of an LEA that conducted two membership counts in the second preceding fiscal year, by the average of the LEA's total membership on the two survey dates); and

(ii) By multiplying the figure determined in paragraph (c)(1)(i) of this section by the LEA's total membership of federally connected children in each subcategory described in section 7003 and claimed in the LEA's application for the current fiscal year payment.

(2) An LEA may submit its total preceding year ADA data. The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(i) Dividing the LEA's preceding year's total ADA data by the preceding year's total membership data; and

(ii) Multiplying the figure determined in paragraph (c)(2)(i) of this section by the LEA's total membership of federally connected children as described in paragraph (c)(1)(i) of this section.

(3) An LEA may submit attendance data based on sampling conducted during the previous fiscal year.

(i) The sampling must include attendance data for all children for at least 30 school days.

(ii) The data must be collected during at least three periods evenly distributed throughout the school year.

(iii) Each collection period must consist of at least five consecutive school days.

(iv) The Secretary uses these data to calculate the ADA of the LEA's federally connected children by—

(A) Determining the ADA of all children in the sample;

(B) Dividing the figure obtained in paragraph (c)(3)(iv)(A) of this section by the LEA's total membership for the previous fiscal year; and

(C) Multiplying the figure determined in paragraph (c)(3)(iv)(B) of this section by the LEA's total membership of federally connected children for the current fiscal year, as described in paragraph (c)(1)(i) of this section.

(d) An SEA may submit data to calculate the average daily attendance calculation for the LEAs in that State in one of the following ways:

(1) If the SEA distributes State aid for education based on data similar to attendance data, the SEA may request that the Secretary use those data to calculate the ADA of each LEA's federally connected children. If the Secretary determines that those data are, in effect, equivalent to attendance data, the Secretary allows use of the requested data and determines the method by which the ADA for all of the LEA's federally connected children will be calculated.

(2) An SEA may submit data necessary for the Secretary to calculate a State average attendance ratio for all LEAs in the State by submitting the total ADA and total membership data for the State for each of the last three most recent fiscal years that ADA data were collected. The Secretary uses these data to calculate the ADA of the federally connected children for each LEA in the State by—

(i)(A) Dividing the total ADA data by the total membership data for each of the three fiscal years and averaging the results; and

(B) Multiplying the average determined in paragraph (d)(2)(i)(A) of this section by the LEA's total membership of federally connected children as described in paragraph (c)(1)(i) of this section.

(e) The Secretary may calculate a State average attendance ratio in States with LEAs that would benefit from such calculation by using the methodology in paragraph (d)(2)(i) of this section.

(Approved by the Office of Management and Budget under control number 1810–0036)

(Authority: 20 U.S.C. 7703, 7706, 7713)

■ 13. Section 222.40 is amended as follows:

■ A. In paragraph (d)(1)(i) by adding the phrase "or density" after the word "sparsity".

■ B. By adding paragraph (d)(1)(iii).

The addition reads as follows:

§ 222.40 What procedures does a State educational agency use for certain local educational agencies to determine generally comparable local educational agencies using additional factors, for local contribution rate purposes?

* * * * *

(d) * * *

(1) * * *

(iii) If an SEA proposes to use one or more special additional factors to determine generally comparable LEAs, the SEA must submit, with its annual submission of generally comparable data to the Department, its rationale for selecting the additional factor or factors and describe how they affect the cost of education in the LEA.

* * * * *

■ 14. Section 222.62 is amended by:

■ A. Redesignating paragraphs (a) and (b) and paragraphs (b) and (c), respectively.

■ B. Adding a new paragraph (a).

■ C. Removing the phrase "an additional assistance payment under section 8003(f)" from newly redesignated paragraph (b) and adding in its place "a heavily impacted LEA payment".

■ D. Removing the phrase "an additional assistance payment under section 8003(f)" from newly redesignated paragraph (c) and adding in its place "see above and throughout the section".

The addition reads as follows:

§ 222.62 How are local educational agencies determined eligible under section 7003(b)(2)?

(a) An applicant that wishes to be considered to receive a heavily impacted payment must submit the required information indicating tax rate eligibility under §§ 222.63 or 222.64 with the annual section 7003 Impact Aid application. Final LEA tax rate eligibility must be verified by the SEA under the process described in § 222.73.

* * * * *

■ 15. Section 222.91 is revised to read as follows:

§ 222.91 What requirements must a local educational agency meet to receive a payment under section 7003 of the Act for children residing on Indian lands?

(a) To receive a payment under section 7003 of the Act for children residing on Indian lands, an LEA must—

(1) Meet the application and eligibility requirements in section 7003 and subparts A and C of these regulations;

(2) Except as provided in paragraph (b) of this section, develop and implement policies and procedures in accordance with § 222.94; and

(3) Include in its application for payments under section 7003—

(i) An assurance that the LEA established these policies and procedures in consultation with and based on information from tribal officials and parents of those children residing on Indian lands who are Indian children, except as provided in paragraph (b) of this section;

(ii) An assurance that the LEA has provided a written response to the comments, concerns and recommendations received through the Indian policies and procedures consultation process, except as provided in paragraph (b) of this section; and

(iii) Either a copy of the policies and procedures, or documentation that the LEA has received a waiver in accordance with the provisions of paragraph (b) of this section.

(b) An LEA is not required to comply with § 222.94 with respect to students from a tribe that has provided the LEA with a waiver that meets the requirements of this paragraph.

(1) A waiver must contain a voluntary written statement from an appropriate tribal official or tribal governing body that—

(i) The LEA need not comply with § 222.94 because the tribe is satisfied with the LEA's provision of educational services to the tribe's students; and

(ii) The tribe was provided a copy of the requirements in § 222.91 and § 222.94, and understands the requirements that are being waived.

(2) The LEA must submit the waiver at the time of application.

(3) The LEA must obtain a waiver from each tribe that has Indian children living on Indian lands claimed by the LEA on its application under section 7003 of the Act. If the LEA only obtains waivers from some, but not all, applicable tribes, the LEA must comply with the requirements of § 222.94 with respect to those tribes that did not agree to waive these requirements.

(Approved by the Office of Management and Budget under control number 1810–0036)

(Authority: 20 U.S.C. 7703(a), 7704)

■ 16. Section 222.94 is revised to read as follows:

§ 222.94 What are the responsibilities of the LEA with regard to Indian policies and procedures?

(a) An LEA that is subject to the requirements of § 222.91(a) must consult with and involve local tribal officials and parents of Indian children in the planning and development of:

(1) Its Indian policies and procedures (IPPs), and

(2) The LEA's general educational program and activities.

(b) An LEA's IPPs must include a description of the specific procedures for how the LEA will:

(1) Disseminate relevant applications, evaluations, program plans and information related to the LEA's education program and activities with sufficient advance notice to allow tribes and parents of Indian children the opportunity to review and make recommendations.

(2) Provide an opportunity for tribes and parents of Indian children to provide their views on the LEA's educational program and activities, including recommendations on the needs of their children and on how the LEA may help those children realize the benefits of the LEA's education programs and activities. As part of this requirement, the LEA will—

(i) Notify tribes and the parents of Indian children of the opportunity to submit comments and recommendations, considering the tribe's preference for method of communication, and

(ii) Modify the method of and time for soliciting Indian views, if necessary, to ensure the maximum participation of tribes and parents of Indian children.

(3) At least annually, assess the extent to which Indian children participate on an equal basis with non-Indian children in the LEA's education program and activities. As part of this requirement, the LEA will:

(i) Share relevant information related to Indian children's participation in the LEA's education program and activities with tribes and parents of Indian children; and

(ii) Allow tribes and parents of Indian children the opportunity and time to review and comment on whether Indian children participate on an equal basis with non-Indian children.

(4) Modify the IPPs if necessary, based upon the results of any assessment or input described in paragraph (b) of this section.

(5) Respond at least annually in writing to comments and recommendations made by tribes or parents of Indian children, and disseminate the responses to the tribe and parents of Indian children prior to the submission of the IPPs by the LEA.

(6) Provide a copy of the IPPs annually to the affected tribe or tribes.

(c)(1) An LEA that is subject to the requirements of § 222.91(a) must implement the IPPs described in paragraph (b) of this section.

(2) Each LEA that has developed IPPs shall review those IPPs annually to ensure that they comply with the provisions of this section, and are implemented by the LEA in accordance with this section.

(3) If an LEA determines, after input from the tribe and parents of Indian children, that its IPPs do not meet the requirements of this section, the LEA shall amend its IPPs to conform to those requirements within 90 days of its determination.

(4) An LEA that amends its IPPs shall, within 30 days, send a copy of the amended IPPs to—

(i) The Impact Aid Program Director for approval; and

(ii) The affected tribe or tribes.

(Authority: 20 U.S.C. 7704)

■ 17. Section 222.95 is amended:

■ A. In paragraph (c), by removing the number "60" and adding in its place "90".

■ B. In paragraph (d), by adding the phrase "or part of the" after the word "all".

■ C. By removing paragraphs (e), (f), and (g).

■ 18. Section 222.161 is amended:

■ A. In the section heading, by removing "section 8009" and adding in its place "section 7009".

■ B. By revising paragraph (a)(5).

■ C. By adding paragraphs (a)(6) and (b)(3).

■ D. By revising paragraph (c).

The additions and revisions read as follows:

§ 222.161 How is State aid treated under section 7009 of the Act?

(a) * * *

(5) Except as provided in paragraph (a)(6), a State may not take into consideration payments under the Act in making estimated or final State aid payments before its State aid program has been certified by the Secretary.

(6)(i) If the Secretary has not made a determination under section 7009 of the Act for a fiscal year, the State may request permission from the Secretary to make estimated or preliminary State aid payments for that fiscal year, that consider a portion of Impact Aid payments as local resources in accordance with this section.

(ii) The State must include with its request an assurance that if the Secretary determines that the State does not meet the requirements of section 222.162 for that State fiscal year, the State must pay to each affected LEA, within 60 days of the Secretary's determination, the amount by which the State reduced State aid to the LEA.

(iii) In determining whether to grant permission, the Secretary may consider factors including whether—

(A) The Secretary certified the State under § 222.162 in the prior State fiscal year; and

(B) Substantially the same State aid program is in effect since the date of the last certification.

(b) * * *

(3) For a State that has not previously been certified by the Secretary under § 222.162, or if the last certification was more than two years prior, the State submits projected data showing whether it meets the disparity standard in § 222.162. The projected data must show the resulting amounts of State aid as if the State were certified to consider Impact Aid in making State aid payments.

(c) *Definitions.* The following definition applies to this subpart:

Current expenditures is defined in section 7013(4) of the Act. Additionally, for the purposes of this section it does not include expenditures of funds received by the agency under sections 7002 and 7003(b) (including hold harmless payments calculated under section 7003(e)) that are not taken into consideration under the State aid program and exceed the proportion of those funds that the State would be allowed to take into consideration under § 222.162.

* * * * *

■ 19. Section 222.162 is amended:

■ A. In paragraph (c)(2) introductory text, by removing the phrase "on those bases" in the first sentence and adding in its place "using one of the methods in paragraph (d) of this section".

■ B. By revising paragraph (d).

The revision reads as follows:

§ 222.162 What disparity standard must a State meet in order to be certified and how are disparities in current expenditures or revenues per pupil measured?

* * * * *

(d) *Accounting for special cost differentials.* In computing per-pupil figures under paragraph (c) of this section, the State accounts for special cost differentials that meet the requirements of paragraph (c)(2) of this section in one of four ways:

(1) *The inclusion method on a revenue basis.* The State divides total revenues by a weighted pupil count that includes only those weights associated with the special cost differentials.

(2) *The inclusion method on an expenditure basis.* The State divides total current expenditures by a weighted pupil count that includes only those weights associated with the special cost differentials.

(3) *The exclusion method on a revenue basis.* The State subtracts revenues associated with the special cost differentials from total revenues, and divides this net amount by an unweighted pupil count.

(4) *The exclusion method on an expenditure basis.* The State subtracts current expenditures from revenues associated with the special cost differentials from total current expenditures, and divides this net amount by an unweighted pupil count.

* * * * *

■ 20. Section 222.164 is amended:

■ A. In the section heading, by removing ‘‘section 8009’’ and adding in its place ‘‘section 7009’’.

■ B. By revising paragraph (a)(2).

The revision reads as follows:

§ 222.164 What procedures does the Secretary follow in making a determination under section 7009?

(a) * * *

(2) Whenever a proceeding under this subpart is initiated, the party initiating the proceeding shall provide either the State or all LEAs with a complete copy of the submission required in paragraph (b) of this section. Following receipt of the submission, the Secretary shall notify the State and all LEAs in the State of their right to request from the Secretary, within 30 days of the initiation of a proceeding, the opportunity to present their views to the Secretary before the Secretary makes a determination.

* * * * *

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Part VII

The President

Presidential Determination No. 2016–10 of September 12, 2016—Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2017

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2016–10 of September 12, 2016

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2017

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit and/or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing Major Drug Transit and Major Illicit Drug Producing Countries List is not a reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), the reason major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced, even if a government has carried out the most assiduous narcotics control law enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Included in this report are justifications for the determinations on Bolivia, Burma, and Venezuela, as required by section 706(2)(B). Explanations for these decisions are published with this determination.

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Burma and Venezuela is vital to the national interests of the United States.

In addition to emphasizing the importance of international cooperation, this determination highlights a number of recent developments concerning various aspects associated with the worldwide drug problem.

Growing Consensus on International Narcotics

There is a growing international consensus that counternarcotics programs must be designed and implemented with the aim of improving the health and safety of individuals while preventing and reducing violence and other harmful consequences to communities.

In concert with international partners, the United States is expanding its domestic and international funding for drug treatment and recovery support programs based on empirical scientific evidence that shows that substance use disorders are medical conditions and must be treated as such. To achieve greater balance, U.S. drug policy also includes stepped-up promotion of effective alternative development programs for farmers and others who agree to stop illegal drug cultivation and associated activities. Such efforts also focus on advancing the rule of law through improving and strengthening civil and law enforcement institutions. United States polices support overall citizen security, including deepening worldwide adherence to fundamental human rights guaranteed by international law.

This consensus was demonstrated at the United Nations General Assembly Special Session on the World Drug Problem (UNGASS) held on April 19–21, 2016, in New York. The meeting served as the first high-level, global gathering on counternarcotics in a generation, and its resulting outcome document forged international consensus behind a balanced and pragmatic approach to drug control. A central theme of UNGASS was to further develop and implement strategies based on the UN Commission on Narcotic Drugs (CND) 2009 Political Declaration and Action Plan aimed at reducing drug production, trafficking, and use from the standpoint of effective public health practices. UNGASS participants, including the United States, also highlighted the importance of substantive advancement of the UN's 2030 Agenda for Sustainable Development, which for the first time in history incorporates rule of law objectives into global development policy.

UNGASS further underscored the broad consensus among United Nations member states with regard to many major drug control themes. At the special session, member states demonstrated their common cause to reinforce efforts to counter drug cultivation, production, distribution, and use through pragmatic approaches that balance both law enforcement and public health perspectives. As stated by the UN International Narcotics Control Board (INCB), we have a "common obligation to employ effective drug abuse prevention, treatment, and rehabilitation of our citizens." Participants also reaffirmed their ongoing commitment to the 1961, 1971, and 1988 UN conventions on drugs as the essential backdrop for worldwide drug control efforts. These conventions leave sufficient room for individual states to pursue drug policies that are in accord with their own laws and national realities.

The foreign policy approaches to drug control of the United States are explained in detail in the U.S. National Drug Control Strategy, and our policies and programs are designed to help reach the goals established at UNGASS and work effectively with partners around the world. They include, for example, on going bilateral cooperation and collaborative work through numerous regional and sub-regional multilateral organizations such as the Organization of American States; the European Union; regional affiliates of the global Financial Action Task Force; the Economic Community of West African States; the Association of Southeast Asian Nations; and many others. The United States also joins other nations in supporting the important, positive contributions of many nongovernmental organizations in the academic and private sectors that work on improving counternarcotics policies and programs.

Growing Challenges of Heroin Use, Adulterants, and Opium Poppy Cultivation

According to the UN Office on Drugs and Crime (UNODC), the use of heroin and other opium poppy derivatives is the greatest worldwide drug problem today. Heroin is also the greatest drug threat in the United States, according to the 2015 U.S. National Drug Threat Assessment published by the U.S. Drug Enforcement Administration. Especially dangerous is the increasing adulteration of heroin with synthetic opioids, such as fentanyl, leading to an increase in the number of deaths as the result of drug overdoses. In 2014, the Centers for Disease Control reported that approximately 10,500 Americans died from heroin-related overdoses; the true number likely is higher given inconsistent testing across the States.

Opium poppy cultivation is expanding beyond Afghanistan, Burma, and Laos the traditional primary producing countries in the world. While Afghanistan is still the major supplier of opium derivatives to Europe and Canada, nearly all opium derivatives found in the United States are primarily grown in or trafficked through Mexico or by Mexican-based drug trafficking organizations. In Mexico, for example, international officials estimate that the number of hectares of heroin poppy under cultivation increased from 11,000 hectares in 2013 to as much as 28,000 hectares in 2015. Limited poppy cultivation also has been detected in Colombia and Guatemala.

According to UNODC, 201,000 hectares of opium poppy were cultivated in Afghanistan in 2015, a 5 percent decline from 2014. Comparative data shows, however, that while cultivation and yields declined relative to previous years, cultivation is still at historically high levels.

The 2016 U.S. International Narcotics Control Strategy indicates that insurgent groups in Afghanistan generate significant revenue by taxing drugs passing through regions they control. Afghan government drug control efforts are hampered by broad security challenges associated with intensive, long-term conflict and combat. The U.S. Government continues to support a broad range of multilateral and bilateral drug control programs in Afghanistan.

Although many treatment and recovery facilities established in Afghanistan show great promise, the 2015 Afghanistan National Drug Use Survey conducted by the Department of State and the Afghan Ministry of Health Institutional Review Board found an 11 percent drug positive rate in Afghanistan. Use of heroin and other opium poppy products, according to international analysis, is also significant in Iran, Kazakhstan, Kyrgyzstan, and Uzbekistan. The INCB is also concerned about the increasing use of Afghan sourced heroin throughout the Middle East.

Heroin in the United States is being increasingly adulterated with low-cost synthetic opioids, especially fentanyl. Research has shown that fentanyl and its analogues can be 25 to 50 times more potent than heroin. According to U.S. law enforcement, most illicit fentanyl, precursors, and fentanyl analogues that have been identified in the United States originate in China and enter the country via Mexico, Canada, or direct mail. The United States has taken a number of steps to address this issue. The United States is working with Mexico and Canada to develop bilateral and multilateral approaches to combating opioid production and trafficking, particularly heroin and fentanyl. Law enforcement cooperation with Mexico includes programs to strengthen Mexico's capacity to identify, investigate, interdict and dismantle clandestine drug laboratories and disrupt trafficking networks. The United States conducts regular and positive discussions with China to enhance controls on many chemicals used to make fentanyl and other synthetic drugs. In a welcome development in late 2015, China placed controls on 116 substances including a dangerous analogue to fentanyl, acetyl fentanyl. Much work remains to be done in this area, and developing compatible, consistent, enforceable international standards is crucial to successfully controlling this growing drug threat.

Cocaine and Coca Cultivation

Although international and U.S. surveys indicate overall production of coca leaf for cocaine has remained stable from a decade ago, Colombia has seen a 42 percent increase in illegal coca crop cultivation from 2014 to 2015. Colombia remains the major provider of cocaine available in the United States, though data shows that cocaine use is declining in the United States and in Europe. Nevertheless, U.S. rates of overdose involving cocaine were up in 2014.

Increased Colombian coca cultivation can be attributed to a number of factors, including Colombia's decision to end the aerial coca eradication program in October 2015 throughout the country. Even prior to the end of spray eradication, coca growers began to implement "counter" eradication techniques, such as by migrating their plantings to areas where spray was not permitted by law or policy. Illegal coca cultivators also began to cultivate smaller, better concealed fields to avoid detection by law enforcement. Colombia has reformulated its counternarcotics strategy to prioritize robust law enforcement activity against criminal drug trafficking organizations, including enhanced interdiction, over that of crop eradication. In 2015, the country seized 295 metric tons of cocaine along with other illegal drugs.

To reach the United States, cocaine is primarily trafficked by land, air, and sea via Central America, Mexico, and the Caribbean. Over the past decade, roughly 97 percent of U.S. bound cocaine is smuggled out of South America on noncommercial maritime conveyances. Smaller amounts are smuggled via commercial maritime vessels and noncommercial aircraft. Using similar conveyances, cocaine destined for Europe is often routed through Brazil, Bolivia, and Venezuela, as well as via West Africa.

Numerous large shipping containers have been interdicted on Atlantic routes, sometimes with a first stop in Portuguese speaking countries in Africa. Using these routes reduces language barriers before the drugs are smuggled to their final destination. A variety of U.S. assistance programs, especially those designed to enhance national interdiction capabilities and target kingpin traffickers, are carried out in Africa.

United States assistance programs are designed to disrupt the flow of cocaine and other harmful products to the United States by building the capacity of judicial, law enforcement, and treatment institutions in partner countries. For example, in Central America these programs are carried out through the Central America Regional Security Initiative, while those in the Caribbean are conducted through the Caribbean Basin Security Initiative. The Merida Initiative provides the framework for assistance and bilateral cooperation with Mexico. Key activities of these programs include drug interdiction cooperation, especially maritime-based efforts in Central America and the Caribbean; law enforcement capacity building; anticorruption initiatives and support; and enhanced prosecution and judicial reform strengthening efforts.

Looking to the Future

Future action by the international community to address drug cultivation, production, trafficking, and use should be closely tied to the important priorities described in the 2016 UNGASS outcome document. These include, for example, utilization of sound scientific evidence for prevention and treatment programs, effective law enforcement, and appropriately balanced responses to drug-related crime. Areas of special concern include the connections between drug use and human rights, especially as they pertain to vulnerable groups such as women and children. The exchange of information among nations and between professionals engaged in reducing drug trafficking and use, and efforts to stay ahead of new and threatening developments, such as synthetic substances, are central to progress by communities, countries, and regions around the world.

The U.S. Government will continue to work with fellow United Nations member states to galvanize the international community toward implementation of the principles that were agreed upon at the 2016 UNGASS. General coordination among concerned United Nations entities is particularly important. This includes collaboration among bodies within the UN structure as a whole, but particularly those that concern themselves to some extent with drug control and related social issues.

You are hereby authorized and directed to submit this report, with its Bolivia, Burma, and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 12, 2016

[FR Doc. 2016–22823
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FEDERAL REGISTER

Vol. 81 Tuesday,
No. 182 September 20, 2016

Part VIII

The President

Proclamation 9495—National POW/MIA Recognition Day, 2016

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Presidential Documents

Title 3—

The President

Proclamation 9495 of September 15, 2016

National POW/MIA Recognition Day, 2016

By the President of the United States of America

A Proclamation

For centuries, courageous members of our Armed Forces have embodied the best of America with devotion and patriotism. On National POW/MIA Recognition Day, we pause to remember our servicemen and women who never returned home. The hardship experienced by prisoners of war and by the family members of those who have gone missing in action is unimaginable to most Americans; it is our country's solemn obligation to bring these heroes back to the land they served to defend, and to support the families who, each day, carry on without knowing the peace of being reunited with their loved ones.

The United States does not leave anyone behind, and we do not forget those who remain missing. We will never stop working to bring home those who gave everything for their country, nor cease in our pursuit of the fullest possible accounting for all who are missing. We are working to fulfill this promise by strengthening communication with the families of those service members missing or taken prisoner. And as Commander in Chief, I am committed to living up to this responsibility.

The men and women of our Armed Forces face unthinkable conditions and bear the painful cost of war. Theirs is a debt we can never fully repay, though we will continue striving to remain worthy of their sacrifice. In honor of those who have not yet come home, and the families who struggle with the fear of unknown fate, we renew our fierce commitment to our patriots in uniform and pledge to do everything we can to bring those missing or held prisoner home.

On September 16, 2016, the stark black and white banner symbolizing America's Missing in Action and Prisoners of War will be flown over the White House; the United States Capitol; the Departments of State, Defense, and Veterans Affairs; the Selective Service System Headquarters; the World War II Memorial; the Korean War Veterans Memorial; the Vietnam Veterans Memorial; United States post offices; national cemeteries; and other locations across our country. We raise this flag as a solemn reminder of our obligation to always remember the sacrifices made to defend our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 16, 2016, as National POW/MIA Recognition Day. I urge all Americans to observe this day of honor and remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–22828
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